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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925

No. 10000

FEDERAL TRADE COMMISSION AND VICTOR MURDOCK,
HUSTON THOMPSON, ET AL, ETC., APPELLANTS,

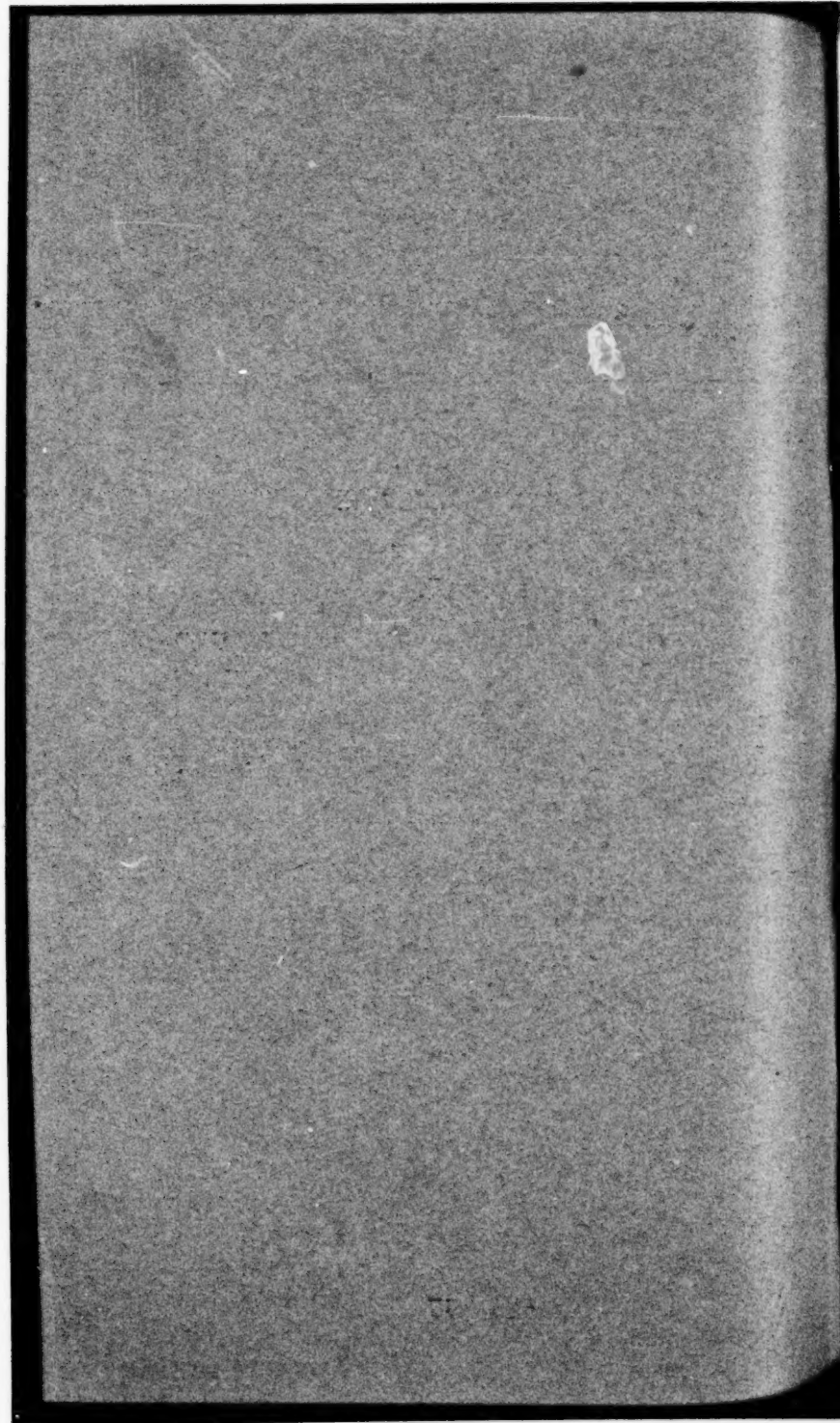
vs.

CLAIRE FURNACE COMPANY, THE ELLA FURNACE
COMPANY, RELIANCE COKE COMPANY, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

FILED MARCH 21, 1926.

(29457)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 917.

FEDERAL TRADE COMMISSION AND VICTOR MURDOCK,
HUSTON THOMPSON, ET AL., ETC., APPELLANTS,

vs.

CLAIRE FURNACE COMPANY, THE ELLA FURNACE
COMPANY, RELIANCE COKE COMPANY, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

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Supreme Court of the District of Columbia.

CLAIRE FURNACE COMPANY, THE ELLA FURNACE Company, Reliance Coke Company, Westmoreland-Connellsville Coal & Coke Company, Weirton Steel Company, Edgewater Steel Company, La Belle Iron Works, Donner Steel Company, Steel & Tube Company of America, Midvale Steel & Ordnance Company, Cambria Steel Company, Republic Iron & Steel Company, McKeesport Tin Plate Company, N. & G. Taylor Company, Inland Steel Company, Trumbull Steel Company, Bethlehem Steel Company, The Youngstown Sheet & Tube Company, The Brier Hill Steel Company, West Penn Steel Company, Wheeling Steel & Iron Company, and Sharon Steel Hoop Company, complainants,

vs.

FEDERAL TRADE COMMISSION AND VICTOR MURDOCK, Huston Thompson, William B. Colver, Nelson B. Gaskell, and John Garland Pollard, members of and constituting the Federal Trade Commission, defendants.

In Equity, No. 37954.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia.

Filed June 12, 1920. Morgan H. Beach, Clerk.

CLAIRE FURNACE COMPANY, THE ELLA FURNACE Company, Reliance Coke Company, Westmoreland-Connellsville Coal & Coke Company, Weirton Steel Company, Edgewater Steel Company, La Belle Iron Works, Donner Steel Company, Steel & Tube Company of America, Midvale Steel & Ordnance Company, Cambria Steel Company, Republic Iron & Steel Company, McKeesport Tin Plate Company, N. & G. Taylor Company, Inland Steel Company, Trumbull Steel Company, Bethlehem Steel Company, The Youngstown Sheet & Tube Company, The Brier Hill Steel Company, West Penn Steel Company, Wheeling Steel & Iron Company, and Sharon Steel Hoop Company, complainants,

In equity. No. 37954.

vs.

FEDERAL TRADE COMMISSION AND VICTOR Murdock, Huston Thompson, William B. Colver, Nelson B. Gaskell, and John Garland Pollard, members of and constituting the Federal Trade Commission, defendants.

Bill of complaint.

1. The names of the complainants and the description thereof, respectively, are as follows:

Claire Furnace Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

The Ella Furnace Company, a corporation organized under and existing by virtue of the laws of the State of Ohio.

2 Reliance Coke Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

Westmoreland-Connellsville Coal & Coke Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

Weirton Steel Company, a corporation organized under and existing by virtue of the laws of the State of West Virginia.

Edgewater Steel Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

La Belle Iron Works, a corporation organized under and existing by virtue of the laws of the State of West Virginia.

Donner Steel Company, a corporation organized under and existing by virtue of the laws of the State of New York.

Steel & Tube Company of America, a corporation organized under and existing by virtue of the laws of the State of Delaware.

Midvale Steel & Ordnance Company, a corporation organized under and existing by virtue of the laws of the State of Delaware.

Cambria Steel Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

Republic Iron & Steel Company, a corporation organized under and existing by virtue of the laws of the State of New Jersey.

McKeesport Tin Plate Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

N. & G. Taylor Company, a corporation organized under and existing by virtue of the laws of the State of Maryland.

Inland Steel Company, a corporation organized under and existing by virtue of the laws of the State of Delaware.

Trumbull Steel Company, a corporation organized under and existing by virtue of the laws of the State of Ohio.

Bethlehem Steel Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

The Youngstown Sheet & Tube Company, a corporation organized under and existing by virtue of the laws of the State of Ohio.

The Brier Hill Steel Company, a corporation organized under and existing by virtue of the laws of the State of Ohio.

West Penn Steel Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

Wheeling Steel & Iron Company, a corporation organized under and existing by virtue of the laws of the State of West Virginia.

Sharon Steel Hoop Company, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania.

3. 2. Said complainants, and each one thereof, have an interest in the subject of this suit and in obtaining the relief herein prayed for. The questions to be determined in this suit are of common and general interest to said complainants. They join herein and bring this suit (on their own behalf, and on behalf of all others similarly situated, who may ask to be made parties hereto and to join herein) because of their interest in the subject of this suit, their desire to obtain the relief prayed for, their common and general interest in the questions to be determined herein, and also to avoid a multiplicity of suits which would have for their purpose the adjudication of the identical questions to determine which this suit is brought and to obtain the identical relief by each complainant respectively, which is prayed for by this Bill of Complaint.

3. The defendant, the Federal Trade Commission, is organized under, and exists by virtue of, an act of Congress of the United States, entitled "An act to create a Federal Trade Commission and to define its powers and duties and for other purposes," which was approved September 26, 1914. (Said act will be hereinafter referred to as the "Trade Commission Act.") The principal office of said Federal Trade Commission is in the District of Columbia, and it is a resident of said District. The other defendants, Victor Murdock, Huston Thompson, William B. Colver, Nelson B. Gaskell, and John Garland Pollard, are members of and constitute the said Federal Trade Commission and are assuming to act, in the premises hereinafter set forth, for and in the name of and on behalf of the said Federal Trade Commission.

4. The Federal Trade Commission, on or about the 15th day of December, 1919, adopted a resolution—a true and correct copy of which is hereto attached and marked Exhibit “A”—which recited that the Committee on Appropriations of the House of Representatives had requested it to suggest what it might do to reduce the high cost of living, and it had answered said committee, to obtain and publish information with respect to foodstuffs and other necessities, and particularly with respect to certain basic industries, including coal and steel; and after said recital it resolved that under section 6, paragraphs (a) and (b), of said trade commission act, it should at once proceed to the collection and publication of such information, and should obtain this information in order to publish the same with respect to the coal, steel, and their related industries; all of which will more fully and at large appear by reference to said Exhibit “A.”

5. Pursuant to the purposes expressed in said resolution, Exhibit “A,” and to carry out the same, the Federal Trade Commission about January 31, 1920, served upon complainants, and a large number of other corporations in the steel and coal industries, orders, true and correct copies whereof are hereto attached, marked Exhibits “B” and “B1.” Said orders required complainants and all others upon whom they were served to make monthly reports of the cost of production, to furnish financial balance sheets, and other information in great detail, upon a large variety of subjects, upon a prescribed form, containing questions of a most searching character, which, together with said orders, was served on complainants and a large number of others engaged in the same business and industries. Said form was accompanied by what was denominated “Instructions for compiling.” A true and correct copy of the form and instructions so served upon those complainants engaged in the steel industry is hereto attached, marked Exhibit “C,” and a true and correct copy of the form and instructions served upon those complainants engaged in the coal industry, is hereto attached, marked Exhibits “D” and “D1,” and a true and correct copy of the form and instructions so served upon those complainants engaged in the coke industry is hereto attached, marked Exhibit “E.” Said Exhibits “C” and “D” and “E” are hereinafter referred to as the “Questionnaires.”

6. Upon the failure of complainants to file answers to said questionnaires, the Federal Trade Commission served further orders and demands upon complainants, true and correct copies whereof are hereto attached and marked respectively Exhibits “F” to “F6” and “G” to “G20.”

7. As by reference to said orders and notices it will more fully and at large appear, the Federal Trade Commission called the attention of complainants to the fact that the trade commission act provides for penalties for delay or failure in the making of said reports, and impliedly threatened complainants with the imposition of said penalties, and still so threatens complainants.

8. Notwithstanding the fact that this court, in the case of Maynard Coal Company vs. Federal Trade Commission, No. 37659, In Equity, had adjudicated that the Federal Trade Commission was without power or authority under the trade commission act to require answers to said questionnaires, and in that suit enjoined it from demanding answers to said questionnaires, nevertheless it continues its demands for answers to said questionnaires upon complainants, and others en-

gaged in like industries, and said demands are made among other purposes to create the impression that the penalties provided by the trade commission act will be imposed unless said answers are made to said questionnaires, said demands, appearing in Exhibits "F" to "F6" and "G" to "G20," hereinbefore referred to and hereto attached.

9. The Federal Trade Commission, in issuing said order, Exhibit "B" and others, and demanding answers to said questionnaires, claims authority so to do solely and exclusively from section 6, paragraphs (a) and (b), of the trade commission act, which gives to it power to gather and compile information, in matters within its jurisdiction, concerning, and to investigate, "the organization, business, conduct, practices, and management of corporations engaged in commerce, and their relations to other corporations and to individuals, associations, and partnerships, and to require corporations engaged in commerce to file with the commission, in such form as the commission may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions furnishing the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships and individuals, of the respective corporations filing such reports"; and the Federal Trade Commission ordered answers to said questionnaires solely and only for the purpose of gathering and compiling said information for publication; and it makes no claim or allegation, nor is it the fact, that any complaint has been filed by or before it, nor has any charge or suggestions even been made that complainants, or any of them, have been or are guilty of any unfair method of competition, or have violated or failed to observe any of the provisions of the trade commission act, or of the act of Congress "to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, or the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act. The information sought from the complainants and others engaged in the same industries by the filing of answers to said questionnaires is sought by the Federal Trade Commission for no other purpose connected with its powers than the alleged purpose, stated by it in its said resolution, Exhibit "A," because it claims that the information sought has some possible relevancy to the high cost of living and its effort to do something hereafter, with reference thereto; none of such information is in any way necessary, nor has it any relation whatsoever, however remote or indirect, to any regulation or control of interstate or foreign commerce, and it is not sought by the Federal Trade Commission for any purpose relating to any regulation of such commerce.

10. Complainants are engaged in producing, manufacturing, and making sales, in the States wherein their producing and manufacturing operations are conducted, and all of them are conducting mining operations or manufacturing plants, or both, and each one of complainants make sales of portions of its products, within the State where the same are produced.

A more particular description of the operations of said respective complainants is as follows, namely:

Claire Furnace Company: Manufacturing plants located in Pennsylvania, producing pig iron. About fifty per cent of its total production is sold in the State of Pennsylvania.

The Ella Furnace Company: Manufacturing plants located in Pennsylvania; produces pig iron; about eighty per cent of its total production is sold in the State of Pennsylvania.

Reliance Coke Company: Mining and manufacturing plants located in Pennsylvania; mines its coal and manufactures it into coke; total production is sold in the State of Pennsylvania.

Westmoreland-Connellsville Coal & Coke Company: Plants located in Pennsylvania; mines its own coal and manufactures it into coke; about twenty per cent of its total production is sold in the State of Pennsylvania.

Weirton Steel Company: Plants located in West Virginia; produces pig iron, tin plate, hot rolled strip steel, and cold rolled strip steel. A portion of its production is sold in West Virginia.

Edgewater Steel Company: Plants located in Pennsylvania, produces car wheels and locomotive tires. Approximately 35 per cent of its product is sold in Pennsylvania.

La Belle Iron Works: Manufacturing plants located in Ohio. Has mines in West Virginia, Pennsylvania, and Minnesota; mines coal and iron ore; manufactures coke, pig iron, billets, slabs, plate, sheets, pipe, and nails. Coal and iron ore are mined and coke is manufactured for the manufacturing plant of the corporation; manufactures billets and slabs, not for sale, but as one of the processes in the production of its finished products. A portion of its finished product is sold in the State where produced.

Donner Steel Company: Manufacturing plant located in the State of New York. Through subsidiaries mines ore in Minnesota for the use of its own plant, and mines coal and manufactures coke in Pennsylvania; produces pig iron, steel, ingots, blooms and billets, plates, bars, and bar products. Sells approximately 30 per cent of its production in the State of New York.

Steel & Tube Company of America: Has manufacturing plants in Illinois, Indiana, and Ohio. Manufactures iron and steel products; also manufactures and produces the greater portion of the ore, coal, and coke used in its manufacturing processes. About 50 per cent of its product in Illinois is sold in said State. A portion of the products of the Indiana and Ohio plants is sold in those States, respectively.

Midvale Steel & Ordnance Company: Manufacturing plants located in Pennsylvania; produces crude steel, semifinished steel, and lighter finished steel products. Sells approximately 30 per cent of its products in Pennsylvania.

Cambria Steel Company: Manufacturing plants located in Pennsylvania; manufactures iron and steel products. Approximately 30 per cent of its products is sold in the State of Pennsylvania.

Republic Iron & Steel Company: Principal manufacturing plant located in Ohio; manufactures pig iron; mines coal and iron ore and manufactures coke for its own use and produces iron and steel products, consisting of crude steel, semifinished steel and the lighter finished products, such as bars, tubes, bolts, terne buckles, &c. Approxi-

mately 30 per cent of its production is sold in the States where the same is produced.

McKeesport Tin Plate Company: Manufacturing plant located in the State of Pennsylvania. Produces tin plate. Sells a portion of its product in the State where produced.

6 N. & G. Taylor Company: Manufacturing plants located in Maryland. Produces semifinished steel and the lighter finished products, such as tin plate, terne plate, black sheets, &c. A portion of its product is sold in the State where produced.

Inland Steel Company: Manufacturing plants located in Indiana and Illinois, coal mining plants in Pennsylvania, and ore mines in Minnesota. Mines and produces the ore, coal, and coke for its own manufacturing processes. Produces crude steel, semifinished steel, and a large line of finished steel products. Sells a portion of its production in the States where produced.

Trumbull Steel Company: Manufacturing plant located in Ohio. Manufactures open-hearth steel, ingots, blooms, billets, slabs, sheet bars, sheets, terne plates, galvanized sheets, roofing products, tin plate, and hot and cold rolled steel strip. Sells about 30 per cent of its production in the State where produced.

Bethlehem Steel Company: Engaged in the general business of manufacturing iron and steel products, generally diversified. A large part of the ore and coal which Bethlehem Steel Company uses is mined and produced by subsidiary and affiliated companies, which have mines in Minnesota, Pennsylvania, West Virginia, Cuba, and Chile. It produces coke at some of its own plants for use in such plants. Its plants are located in the States of Pennsylvania and Maryland, in which States it sells a portion of its product.

The Youngstown Sheet & Tube Company: Plants located in the State of Ohio. It produces through subsidiary companies ore, coal, and coke. It sells about 25 per cent of its products in the State where produced.

The Brier Hill Steel Company: Manufactures iron and steel products and produces iron and steel products, coke, and its by-products. Its plants are located in the State of Ohio, and it produces through subsidiaries ore, coal, and coke. It sells over 25 per cent of its product in the State where produced.

West Penn Steel Company: Plant located in Pennsylvania. Manufactures sheet bars and sheets. Sells a portion of its product in the State of Pennsylvania.

Wheeling Steel & Iron Company: Manufacturing plants located in West Virginia and Ohio, and coal mines in the same States. Produces coal for its own use and manufactures and sells pig iron, slabs, billets, sheet and tin bars, skelp, pipe, and tin plate. The coal mined in West Virginia is used in part in the plants of the company located in Ohio. The pig iron produced in Ohio is used in plants of the company located in West Virginia. Part of product in West Virginia plants, such as tin bars, used in plants of the company in Ohio. Much of the product is sold and disposed of in the States where produced.

Sharon Steel Hoop Company: Manufacturing plants located in Pennsylvania and Ohio; produces pig iron, billets, sheets, hoops, and bands. Approximately 15 per cent of its total production sold in Pennsylvania and 15 per cent in Ohio.

11. The Federal Trade Commission has no power or authority, and no right, to demand from complainants answers to said questionnaires, or that they make said reports or any report such as that required under said instructions and notices hereinbefore referred to, for the following reasons, namely:

(a) The processes of manufacturing and production about which said questionnaires inquire, and upon which said questionnaires require reports to be made, are not "commerce" within the definition of the trade commission act, or of the Constitution of the United States, or the acts of Congress passed in pursuance thereof.

7 (b) Said orders and said questionnaires in effect practically prescribe the form and manner in which complainants shall keep their books of account, which manner and form differ from any of those now used by any of said complainants.

(c) Said orders and said questionnaires require complainants to furnish information not provided for by the trade commission act, and not relating to the "organization, business, conduct, practices, management, and relation to other corporations, partnerships and individuals," but goes far beyond this.

(d) Said orders and said questionnaires require from complainants neither "an annual or special, or both annual and special, report, or answers in writing to specific questions," but require of complainants a regular monthly report.

(e) Said orders and questionnaires provide for the inspection of the books and accounts of complainants, for the purpose of checking the reports so ordered, with the entries in said books of complainants. The Federal Trade Commission has no such power under the trade commission act, except when and if the party so required to report is being investigated or proceeded against, as provided in section 9 of the trade commission act.

(f) Said orders and said questionnaires would not be justified or authorized unless the Federal Trade Commission had general visitorial power of complainants, which visitorial power the trade commission act does not purport to give.

(g) The purpose declared by the Federal Trade Commission for which it has issued said orders and questionnaires, is such as is not authorized by law, nor are said orders and questionnaires calculated to effectuate even the purpose declared, and even if the same was authorized by law, said orders and questionnaires would accomplish, or tend to accomplish, no useful purpose recognized by law.

(h) Said orders and said questionnaires, and the action of the Federal Trade Commission in demanding answers thereto and compliance therewith, are an unauthorized and unwarranted usurpation of power, and an intrusion upon the private affairs, private business and private rights of complainants; and if the Federal Trade Commission, in accordance with its announced purpose in demanding compliance with said orders and answers to said questionnaires, makes public the information thereby obtained, it will result in disclosing to the public the secrets of the business and take away the property rights of complainants in their processes, organization and methods, which are of great value to complainants.

(i) The announced purpose of said commission to collect and make public the information sought to be obtained by said orders and ques-

tionnaires, with reference to the iron, steel, and coal industries, for the general information of the public, is such a purpose as is not recognized by law, and for the accomplishment of which there is no authority given it by the trade commission act.

(j) To so keep the books and accounts of complainants as to be able to make correct answers to said questionnaires in accordance with said orders, and to prepare said answers monthly, would entail upon said complainants an enormous expense, not contemplated, warranted, or authorized by the trade commission act, nor calculated to serve any useful purpose for which the trade commission act was passed, or for which the Congress of the United States had any power to pass the same. The forms prescribed by such questionnaires would merely increase the expense of keeping books and require the employment of extra bookkeepers, without any advantage to the complainants either by rendering their records more valuable for the purposes of their business, or enabling them to keep in any closer touch with their operations. The various subdivisions prescribed by said questionnaires are too vague and indeterminate to admit of accurate compliance therewith.

8 12. The construction placed upon the trade commission act by the Federal Trade Commission, in issuing said orders and said questionnaires, and demanding compliance therewith and answers thereto, makes the trade commission act unconstitutional, illegal, and void, for the reasons following, namely:

(a) It is a regulation of property and business wholly intrastate, and not interstate as defined by the Constitution of the United States, nor "commerce" as defined in the trade commission act.

(b) The production of coal, or coke, or kindred products, and of iron and steel, and related products as conducted by complainants is intrastate business, beyond the power of Congress to regulate, and any attempt to regulate the same would be in violation of the Constitution of the United States, and particularly the tenth amendment thereto.

(c) Complainants have the right of privacy as to their books of account, papers, contracts, and transactions, and the Congress of the United States has no power under the Constitution, through the Federal Trade Commission, or any other agency, to require complainants to report for publication the information contained in said books of account, papers, contracts, and transactions, and so to do would be particularly in violation of the fourth amendment to the Constitution of the United States, which protects against unreasonable search and seizure.

(d) Compliance by complainants with said orders and answers to said questionnaires, will subject them to unnecessary expense and loss in the preparation of said reports, and making provision therefor in their systems of accounts, and will deprive complainants of their property without due process of law, and without just compensation, in violation of the Constitution of the United States, and particularly the fifth amendment thereto.

13. The trade commission act does not purport to give to the Federal Trade Commission the power and authority which it seeks to exercise by said orders and said questionnaires, and if said trade commission act did attempt to give any such power or authority, the same

would be unconstitutional, illegal, and void, because the Congress of the United States would have no power and authority to vest in the Federal Trade Commission any such power or authority.

14. Complainants aver that the Federal Trade Commission intends to proceed against complainants, or some of them, either by actions for writs of mandamus, or by the imposition of penalties, or possibly both, because of the failure and refusal of complainants to comply with said orders and make answers to said questionnaires, and its proposed action would result in a large number of actions, all raising substantially the same questions as are raised by this Bill of Complaint, or would, if the penalties were imposed, result in perhaps the imposition of penalties each month aggregating against the party against which the penalties were imposed hundreds if not thousands of dollars per day. When and if the Federal Trade Commission makes answer hereto, all of the necessary legal questions can be raised and speedily determined, and a multiplicity of suits, the imposition of penalties, and great cost, loss, and expense to all parties concerned can be avoided. Complainants, by reason of the premises have no adequate remedy at law, and only by the interposition of this court, and the granting of the relief herein prayed, can complainants avoid a multiplicity of suits, and the imposition of penalties, secure the relief to which they are entitled, prevent the imposition of wrong and oppression, and forestall the exercise by the Federal Trade Commission of powers it does not possess, to the great and irreparable damage, cost, loss, wrong, and injury of complainants.

9 Wherefore complainants pray:

FIRST. That a temporary injunction, or interlocutory order, may be granted, restraining and enjoining said Federal Trade Commission, its members, agents, assistants, deputies, employes and attorneys, from taking any steps, or instituting any suits, or causing the same to be taken or instituted, or any proceedings of any kind, to compel compliance with said orders or to require answers to said questionnaires.

SECOND. Upon the final hearing of this suit, that a decree may be entered herein enjoining and restraining said Federal Trade Commission, its members, agents, assistants, deputies, employes and attorneys from the enforcement of said orders, and from requiring answers to said questionnaires, and from taking any proceedings whatever with reference to the enforcement of compliance with said orders and answers to said questionnaires.

THIRD. That such other and further orders and decrees may be entered herein and such relief granted as in the premises and in equity and good conscience may be required, whether herein specifically prayed for or not.

FOURTH. That a writ of subpoena of the United States of America may issue, directed to said Federal Trade Commission, commanding it on a certain day, and under certain penalty therein to be specified, personally to be and appear before this honorable Court, and then and there full, true, and complete answer make to all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide by such order and

decree herein as to your Honors shall seem meet and agreeable to equity and good conscience.

A. LEO WEIL, WEIL AND THORP,
LEN COOK,
COOKE AND BINNEMANN,
Solicitors for Complainants.

SCOTT, BANCROFT, MARTIN & STEPHENS,
CHADEBOURNE, BARRETT & WALLACE,
RICHARD JONES, JR.,
DOUGLASS, FIFE & YOUNG,
MAYER, MEYER, AUSTRIAN & PLATT,
HARRINGTON, DEFORD, HEIM & HUXLEY,
CRAVATH & HENDERSON AND PAUL D. CRAVATH,
HINE, KENNEDY, MANCHESTER, CONROY & FORD,
W. W. FORD,
ALTER, WRIGHT & BARRON,
JAMES P. WHITLA,
A. LEO WEIL,
CHARLES M. THORP,
Of Counsel.

10 COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

E. T. Weir, being duly sworn according to law, deposes and says that he is president of the Weirton Steel Company, one of the complainants above named; that he is, and for many years has been, familiar with the iron, steel, and coal industries, and has a general knowledge of the business and operations of all of said complainants; that the statements of fact in the foregoing bill of complaint are true, and the averments of law he is informed by counsel, and believes the same to be true; and further saith not.

E. T. WEIR.

Sworn to and subscribed before me this 11th day of June, A. D. 1920.

B. M. WARDEN,
Notary Public.

(My commission expires end next session of Senate.)

[SEAL.]

11 *Exhibit "A."*

Resolution of Federal Trade Commission.

"Whereas at a hearing held by the Committee on Appropriations of the House of Representatives on August 25th, 1919, the Federal Trade Commission was requested to suggest what it might undertake to do to reduce the high cost of living; and

"Whereas the commission recommended to the said committee that it would be desirable to obtain and publish from time to time current information with respect to the production, ownership, manufacture, storage, and distribution of foodstuffs, or other necessities, and the products or by-products arising from or in connection with the preparation and manufacture thereof, together with figures of cost and

wholesale and retail prices,' and particularly with respect to various basic industries, including coal and steel; and

"Whereas the said committee recommended an appropriation of \$150,000 for the current fiscal year for the said commission in consequence of this recommendation and the same was duly made by authority of Congress, and made available on November 4, 1919: Now therefore, be it

"*Resolved*, That the Federal Trade Commission by virtue of section 6, paragraphs (a) and (b), of the Federal Trade Commission act, proceed to the collection and publication of such information with respect to such basic industries as the said appropriation and other funds at its command will permit: And be it further

"*Resolved*, That such action be started as soon as possible with respect to the coal industry and the steel industry, including in the latter closely related industries such as the iron ore, coke, and pig iron industries."

12

Exhibit "B."

(Iron and steel companies.)

GENTLEMEN:

The Federal Trade Commission, pursuant to a resolution adopted on December 15, 1919, under the powers conferred upon it in section 6, paragraphs (a) and (b), of the Federal Trade Commission act, approved September 26, 1914, and in consideration of a special appropriation by Congress for such purposes, requires your company to report your monthly costs of production for the several products designated and other data as specified, in the form prescribed in the enclosed schedule, a duplicate of which is enclosed for your files.

Said reports, except as to balance sheet and income statement, are required monthly for each month of the calendar year 1920, and until further notice is given you, and are required to be mailed not later than the twenty-fifth day of the month succeeding the month for which the report is made. The cost sheets should be sent in as soon as prepared, even if the monthly report has not been completed. The report as to balance sheet is required as of the close of business December 31, 1919, or as of the close of your last fiscal year, with the first monthly report, namely, for January, 1920. Detailed income statement for the year ended December 31, 1919, or for your last fiscal year, is likewise required with the first monthly report. For each succeeding quarter a similar income statement is required with the cost report for the month following the closing date of the period; if the annual income statement referred to above does not close with the calendar year, quarterly reports for any intervening quarters in 1919 are also required.

The purpose of this report is to compile in combined or consolidated form the data received from individual companies and to issue currently in such form accurate and comprehensive information regarding changes in the conditions of the industry both for the benefit of the industry and of the public.

By direction of the commission.

J. P. YODER,
Secretary.

Exhibit "B1."

(Coal and coke companies.)

GENTLEMEN:

The Federal Trade Commission, pursuant to a resolution adopted on December 15, 1919, under the powers conferred upon it in section 6, paragraphs (a) and (b), of the Federal Trade Commission act, approved September 26, 1914, and in consideration of a special appropriation by Congress for such purposes, requires your company to report your monthly costs of production and other data as specified, in the form prescribed, in the enclosed schedule and instructions relating thereto.

Said report, except as to balance sheet, are required monthly for each month of the calendar year 1920, and until further notice is given you, and are required to be mailed not later than the twentieth day of the month succeeding the month for which the report is made; the report as to balance sheet is required as of the close of business December 31, 1919, or as of the close of your last fiscal year.

If the mines are operated by you in more than one field or district, a separate cost report is required for each field or district. A separate cost report may be filed for each mine, if you so elect, provided that you file also a composite cost report for each field or district.

Your attention is called to the fact that the above-mentioned law provides penalties for delay or failure in the making of reports to the commission or for making false reports.

By direction of the commission.

J. P. YODER, *Secretary.*

14 Form I. S.
F. T. C. *Exhibit "C."*

F. T. C. File No.

Federal Trade Commission report for iron and steel industry.

(Full name of reporting company.)

(Address of principal office.)

....., 19.....
(Month.)

Notice.

Attention is directed to the following extract from "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914:

"That the commission shall also have power * * *

"Section 6 (b). To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers

subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. * * *

"Section 10. * * * Any person who shall wilfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this act, or who shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this act, or who shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporations, or who shall wilfully remove out of the jurisdiction of the United States, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall wilfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than 3 years, or to both such fine and imprisonment.

"If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for 30 days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure. * * *

Certification.

Iron and Steel Industry report of _____
(Name of company.)

for the month of _____, 1919.

Approved and certified correct:

To be signed by an official of the company. _____
(Name and title of officer.)

Date _____, 19____.

16
(Full name of reporting company.)

F. T. C. File No.

Month of 19....

.....
(Address of principal office.)*I. Production.*

With respect to specified products, give, by plants, the total quantity produced during the month, designating unit of quantity in each case in the form below. If sufficient space is not provided attach securely additional sheets showing information as provided by the form. For any unusual change in quantity an explanation should be attached.

Name of product.	Unit.*	Quantity.			Plant.	
					Name.	Location.
Coke, bee hive						
Coke, by-product						
Pig iron, basic						
Pig iron, Bessemer						
Pig iron, foundry						
Spiegleisen						
Ferromanganese						
Pig iron, all other						
Ingots, O. H., basic**						
Ingots, O. H., acid						
Ingots, Bessemer						
Ingots, all other						
Blooms						
Slabs						

* Distinguish gross from net tons.

** Includes Duplex.

(Schedule continued on next page.)

F. T. C. File No.

17 Month of 19....
(Full name of reporting company.)

I. Production (continued).

Name of product.	Unit.*	Quantity.			Plant.	
					Name.	Location.
Billets, large						
Billets, small						
Sheet and tin plate bars						
Rails, standard, heavy, O. H.						
Rails, standard, heavy, Bessemer						
Rails, light						
Structural shapes, heavy						
Structural shapes, light						
Plates, sheared						
Plates, universal						
Skelp, iron						
Skelp, steel						
Merchant bars, steel						
Merchant bars, iron						
Hoops, bands, and cot- ton ties						
Strip steel						
Butt weld black tubes, iron						
Butt weld black tubes, steel						

* Distinguish gross from net tons.

(Schedule continued on next page.)

18

F. T. C. File No.

Month of 19....

(Full name of reporting company.)

I. Production (concluded).

Name of product.	Unit.*	Quantity.			Plant.	
					Name.	Location.
Lap weld black tubes, steel						
Lap weld black tubes, iron						
Seamless tubes						
Black sheets (all kinds)						
Galvanized sheets						
Black plate						
Tin plate						
Wire rods						
Bright wire						
Galvanized wire						
Barbed wire						
Wire nails						
Cut nails						

*Distinguish gross from net tons.

18 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL.

19 F. T. C. File No.....
(Full name of reporting company.)..... Month of.....19....
(Address of principal office.)*II. Costs.*

With respect to the products specified below, furnish copies of company's monthly cost sheets for each battery of ovens, furnace, mill or other type of operation. All cost sheets should be clearly marked to indicate the company and the period to which they relate, the nature and grade of the product, the location of the oven, furnace, mill or other operation. For any unusual costs per unit on the cost sheets submitted an explanation should be attached.

In schedule below show the name of each plant, also the number of cost sheets submitted to cover the operations of each plant for the products listed therein. If sufficient space is not provided in the form, attach securely additional sheets showing information as provided by the form.

N. B. The cost sheets should be sent in as soon as prepared, even if the monthly report has not been completed.

Name of product.	Name of plant.	Number of cost sheets submitted for each plant.
Coke, beehive		
Coke, by-product		
Pig iron, basic		
Pig iron, Bessemer		
Pig iron, foundry		
Ingots, open hearth		
Ingots, Bessemer		
Blooms, open hearth		
Blooms, Bessemer		
Slabs, open hearth		
Slabs, Bessemer		

(Schedule concluded on next page)

(Full name of reporting company.)

II. Costs (concluded).

Name of product.	Name of plant.	Number of cost sheets submitted for each plant.
Billets, large, O. H.		
Billets, large, Bessemer.		
Billets, small, O. H.		
Billets, small, Bessemer.		
Sheet bars.		
Structural shapes, heavy.		
Plates, sheared.		
Plates, universal.		
Rails, standard heavy, open hearth.		
Rails, standard heavy, Bessemer.		
Merchant bars, steel.		
Merchant bars, iron.		
Tin plate.		
Wire rods.		

21 F. C. T. File No.
(Full name of reporting company.)..... Month of 1920.
(Address of principal office.)*III. Sales prices.*

By sales prices is meant the actual realization f. o. b. mill, after deduction of freight allowances made to purchasers. Return to be made for each product specified below for domestic and export shipments separately; it will be sufficient to show data for 80 per cent of the quantity of said shipments of each product specified, provided that only the smallest shipments are the ones omitted and the percentage reported is stated. For any unusual realization an explanation should be attached.

(A) Domestic Shipments (Exclusive of intercompany or interdepartment transfers).

Name of product.	Unit.*	Quantity.			Value (omit cents).		Average realization per unit.		Per- centage reported.
					\$		\$	c	
Pig iron, basic.									
Pig iron, Bessemer.									
Pig iron, foundry.									
Billets, large, O. H.									
Billets, large, Bessemer.									
Billets, small, O. H.									
Billets, small, Bessemer.									

* Distinguish gross from net tons.

(Schedule continued on next page.)

(Full name of reporting company.)

III. Sales prices (continued).

(A) Domestic shipments (exclusive of inter-company or inter-department transfers) (concluded).

Name of product.	Unit.*	Quantity.			Value (omit cents).		Average realiza- tion per unit.		Percent- age re- ported.
Sheet bars					\$		\$	c	
Plates, sheared									
Plates, universal									
Rails, standard O. H.									
Rails, standard Bessemer									
Structural shapes, heavy									
Structural shapes, light									
Merchant bars, steel									
Merchant bars, iron									
Black sheets									
Tin plate									
Wire rods									

* Distinguish gross from net tons.

(Schedule concluded on next page.)

(Full name of reporting company.)

III. Sales prices (concluded).

(B) Export Shipments (exclusive of inter-company or inter-department transfers).

Name of product.	Unit.*	Quantity.			Value (omit cents).	Average realiza- tion per unit.		Percent- age re- ported.
					\$	\$	c	
Pig iron, basic								
Pig iron, Bessemer								
Pig iron, foundry								
Billets, large, O. H.								
Billets, large, Bessemer								
Billets, small, O. H.								
Billets, small, Bessemer								
Sheet bars								
Plates, sheared								
Plates, universal								
Rails, standard heavy, O. H.								
Rails, standard heavy, Bessemer								
Structural shapes, heavy								
Structural shapes, light								
Merchant bars, steel								
Merchant Bars, iron								
Black sheets								
Tin plate								
Wire rods								

* Distinguish gross from net tons.

24

F. T. C. File No.

(Full name of reporting company.)

Month of19....

(Address of principal office.)

IV. Contract prices

By contract price is meant the base price less freight allowances to be paid by purchasers and to be deducted from invoices. The term "Contracts" is intended to cover all agreements for the sale of specified commodities whether by formal written agreements or orders booked (exclusive of intercompany contracts with subsidiary companies and interdepartment transfers). Return to be made for each product specified below for domestic and export contracts separately; it will be sufficient to show data for 80 per cent of the quantity of said contracts of each product specified, provided that only the smallest contracts are the ones omitted, and the percentage reported is stated. For any unusual prices an explanation should be attached.

(a) Domestic sales contracts entered into during month.

Name of product.	Unit.*	Quantity.			Amount (omit cents).		Average price base size per unit.			Percent- age reported.
					\$		\$		c	
Pig iron, basic										
Pig iron, Bessemer										
Pig iron, foundry										
Billets, large, O. H.										
Billets, large, Bessemer										
Billets, small, O. H.										
Billets, small, Bessemer										
Sheet bars										
Plates, sheared										

* Distinguish gross from net tons.

(Schedule continued on next page.)

(Full name of reporting company.)

IV. Contract prices (continued).

(a) Domestic sales contracts entered into during month (concluded).

Name of product.	Unit.*	Quantity.			Amount (omit cents).		Average price base size per unit.			Percent- age reported.
Plates, universal					\$		\$		c	
Rails, standard heavy, O. H.										
Rails, standard heavy, Bess.										
Structural shapes, heavy										
Structural shapes, light										
Merchant bars, steel										
Merchant bars, iron										
Black sheets										
Tin plate										
Wire rods										

* Distinguish gross from net tons.

(Schedule concluded on next page.)

26

F. T. C. File No.....

Month of.....19..

.....
(Full name of reporting company.)

IV. Contract prices (concluded).

(b) Export sales contracts entered into during month.

Name of product.	Unit.*	Quantity.				Amount (omit cents).			Average price base size per unit.			Percent- age reported.	
Pig iron, basic						\$			\$		c		
Pig iron, Bessemer													
Pig iron, foundry													
Billets, large, O. H.													
Billets, large, Bessemer													
Billets, small, O. H.													
Billets, small, Bessemer													
Sheet bars													
Plates, sheared													
Plates, universal													
Rails, standard, heavy, O. H.													
Rails, standard, heavy, Bess.													
Structural shapes, heavy													
Structural shapes, light													
Merchant bars, steel													
Merchant bars, iron													
Black sheets													
Tin plate													
Wire rods													

* Distinguish gross from net tons.

27

F. T. C. File No.

Month of 19..

.....
(Full name of reporting company.).....
(Address of principal office.)*V. Capacity of oven, furnaces, works, and mills.*

With respect to kinds of ovens, furnaces, works, and mills specified below state estimated annual capacity, in terms of product, as of January 1, 1920, in the January, 1920, report, and in case any change occurs therein during subsequent months report same in the report for the month during which the change occurred, otherwise enter on schedule "no change." By estimated annual capacity is meant the quantity of the product which the plant equipment in question could produce if run under normal conditions of operation full time, less average time necessary for repairs, etc. If sufficient space is not provided in form below attach securely additional sheets showing information as provided by the form.

Plant.			Estimated annual capacity.			Unit.*
Kind.	Name.	Location.				
Bee hive ovens						
By-product ovens						
Blast furnaces						
Bessemer converters						
O. H. steel furnaces						
Rail mills						
Blooming, large billet or slabbing mills						
Shape mills						
Small billet and sheet bar mills						
Sheared plate mills						
Universal plate mills						
Merchant bar mills						
Wire rod mills						
Wire drawing mills						
Black sheet mills, hot						
Sheet and black plate mills, hot						
Tinning mills						
Tube mills						

* Distinguish gross from net tons.

28

F. T. C. File No.

(Full name of reporting company.)

Month of 19...

(Address of principal office.)

VI. Orders.

For products specified in schedule below state the quantities of orders booked during the month and the quantities of unfilled orders outstanding at the end of the month. Entries in column "Quantities booked during the month" should not include inter-company orders to or from subsidiary companies.

Name of product.	Unit.*	Quantities booked during month.			Unfilled orders at end of month.		
Pig iron, basic							
Pig iron, Bessemer							
Pig iron, foundry							
Billets, large, O. H.							
Billets, large, Bessemer							
Billets, small, O. H.							
Billets, small, Bessemer							
Sheet bars							
Plates, sheared							
Plates, universal							
Rails, standard, heavy, O. H.							
Rails, standard, heavy, Bessemer							
Structural shapes, heavy							
Structural shapes, light							
Merchant bars, steel							
Merchant bars, iron							
Sheets, all kinds							
Tin plate							
Wire rods							

* Distinguish gross from net tons.

29 F. T. C. File No.
(Full name of reporting company.)..... Month of 19...
(Address of principal office.)*VII. Depreciation and general administrative and selling expenses.*

If you have made any estimate or actual allocation between products of depreciation or of general administrative and selling expenses (other than that included on your cost sheets) show below the rates per unit so estimated or used for the products specified.

Name of products.	Unit.*	Deprecia- tion.		General admin. & selling expenses.		Indicate whether actual or estimate.
		\$	c	\$	c	
Pig iron						
Billets, large, open hearth						
Billets, large, Bessemer						
Billets, small, open hearth						
Billets, small, Bessemer						
Sheet bars						
Plates, sheared						
Plates, universal						
Rails, standard, heavy, O. H.						
Rails, standard, heavy, Bessemer						
Structural shapes, heavy						
Structural shapes, light						
Merchant bars, steel						
Merchant bars, iron						
Black sheets						
Tin plate						
Wire rods						

* Distinguish gross from net tons.

30

..... F. T. C. File No.
(Full name of reporting company.)
..... Month of19..
(Address of principal office.)

VIII. Income statement.
Period.....

Item.	Detail.				Total.			
Sales	XXXXX	XXXXX	XXXXX	XXXXX				
Cost of sales (see note below)					XXXXX	XXXXX	XXXXX	XXXXX
Depreciation, general and administrative and selling expenses (not included in cost of sales.)					XXXXX	XXXXX	XXXXX	XXXXX
	XXXXX	XXXXX	XXXXX	XXXXX				
Net income from operations	XXXXX	XXXXX	XXXXX	XXXXX				
Income from other sources (Schedule 1)	XXXXX	XXXXX	XXXXX	XXXXX				
Total net income	XXXXX	XXXXX	XXXXX	XXXXX				
Deductions from net income (Schedule 2)	XXXXX	XXXXX	XXXXX	XXXXX				
Balance of net income transferred to surplus	XXXXX	XXXXX	XXXXX	XXXXX				

NOTE.—There shall not be included in cost of sales any of the following items, which are to be reported elsewhere: Federal income and excess profits taxes, interest on bonds, interest on notes, sinking fund provisions, discounts on bonds and notes, losses on investments, amortization of excess cost of construction, losses on contracts, reorganization expense, fire losses, donations (exclusive of welfare work), adjustments of property values, bonuses to officers.

31

File No.

Month of 19..

.....
(Full name of reporting company.).....
(Address of principal office.)*Income statement. Schedule 1.*

Details of income from other sources. Designate the amounts received from investments or sources unrelated to the iron and steel business.

	\$			c
Interest				
Rentals				
Cash discounts on purchases				
Royalties				
Dividends, from affiliated or subsidiary companies				
Income from outside investments				
Total				

33 F. T. C. File No.
 (Full name of reporting company.)
 Month of 19....
 (Address of principal office.)

IX. Balance sheet as at

19

Assets.	Detail.				Total.			
Cash in bank and on hand					XXXXX	XXXXX	XXXXX	XXXXX
Accounts receivable—current					XXXXX	XXXXX	XXXXX	XXXXX
Notes receivable—current					XXXXX	XXXXX	XXXXX	XXXXX
Inventories					XXXXX	XXXXX	XXXXX	XXXXX
Sub-total of current assets					XXXXX	XXXXX	XXXXX	XXXXX
Less: Provision for doubtful accounts					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total current assets	XXXXX	XXXXX	XXXXX	XXXXX				
Insurance					XXXXX	XXXXX	XXXXX	XXXXX
Taxes					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total prepayments	XXXXX	XXXXX	XXXXX	XXXXX				
Notes and loans receivable					XXXXX	XXXXX	XXXXX	XXXXX
Stocks of affiliated or subsidiary companies					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total intercompany accounts	XXXXX	XXXXX	XXXXX	XXXXX				
Stocks and bonds of other companies					XXXXX	XXXXX	XXXXX	XXXXX
Real estate not used in steel production					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total investments	XXXXX	XXXXX	XXXXX	XXXXX				
Mineral properties					XXXXX	XXXXX	XXXXX	XXXXX
Development and stripping in advance					XXXXX	XXXXX	XXXXX	XXXXX
Sub-total of fixed assets					XXXXX	XXXXX	XXXXX	XXXXX
Less: Depletion					XXXXX	XXXXX	XXXXX	XXXXX
Real estate and buildings					XXXXX	XXXXX	XXXXX	XXXXX
Machinery and equipment					XXXXX	XXXXX	XXXXX	XXXXX
Office furniture and fixtures					XXXXX	XXXXX	XXXXX	XXXXX
Sub-total of fixed assets					XXXXX	XXXXX	XXXXX	XXXXX
Less: Depreciation					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total fixed assets	XXXXX	XXXXX	XXXXX	XXXXX				
Good will, patents, etc.,	XXXXX	XXXXX	XXXXX	XXXXX				
	XXXXX	XXXXX	XXXXX	XXXXX				
	XXXXX	XXXXX	XXXXX	XXXXX				

34
 (Full name of reporting company.)

 (Address of principal office.)

F. T. C. File No.

Month of, 19...

IX. Balance sheet as at
 19

Liabilities.	Detail.				Total.			
Trade accounts payable					XXXXX	XXXXX	XXXXX	XXXX
Trade notes payable					XXXXX	XXXXX	XXXXX	XXXX
Wages accrued:					XXXXX	XXXXX	XXXXX	XXXX
					XXXXX	XXXXX	XXXXX	XXXX
					XXXXX	XXXXX	XXXXX	XXXX
Total current liabilities	XXXXX	XXXXX	XXXXX	XXXXX				
Taxes					XXXXX	XXXXX	XXXXX	XXXX
Interest					XXXXX	XXXXX	XXXXX	XXXX
Unclaimed wages					XXXXX	XXXXX	XXXXX	XXXX
					XXXXX	XXXXX	XXXXX	XXXX
					XXXXX	XXXXX	XXXXX	XXXX
Total accrued liabilities	XXXXX	XXXXX	XXXXX	XXXXX				
Notes and accounts payable					XXXXX	XXXXX	XXXXX	XXXX
					XXXXX	XXXXX	XXXXX	XXXX
Total intercompany accounts	XXXXX	XXXXX	XXXXX	XXXXX				
Capital stock:								
Preferred shares					XXXXX	XXXXX	XXXXX	XXXX
Common shares					XXXXX	XXXXX	XXXXX	XXXX
	XXXXX	XXXXX	XXXXX	XXXXX				
Bonds								
Mortgages								
Loans and notes payable, bank or open account								
Appropriated surplus								
Surplus (Schedule I)								

State against item of inventories whether they are at cost and if not on what basis.
 State against each item of fixed assets whether the values are the cost of acquisition
 or value based on reappraisal.

Certified correct and in accordance with the books.

Name

.....
 (Title of officer.)

34 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL-

35
 (Full name of reporting company.)

 (Address of principal office.)

F. T. C. File No.

Month of 19...

Balance Sheet, Schedule 1.

	\$			c
Surplus at beginning of period				
Add—Credits made in 1919, applicable to prior periods				
Deduct—Charges made in 1919, applicable to prior periods				
Adjusted surplus as at beginning of period				
Add—Net income for year, 1919				
Deduct dividends				
Surplus at end of year as shown on balance sheet				

Exhibit "D."

State _____ Field _____ Filed No. _____

(Do not use. For F. T. C. only.)

Federal Trade Commission report on cost, income, and tonnage of semibituminous, bituminous, or subbituminous coal or lignite.

(Full name of reporting operator.)-----
(Address of principal office.)-----, 19--
(Month.)

Return all sheets of this form to the Federal Trade Commission.

Form C-51
F. T. C.*Notice.*

Attention is directed to the following extract from "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

"That the commission shall also have power * * *

"Section 6 (b). To require, by general or special orders, corporations engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. * * *

"Section 10. * * * Any person who shall wilfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this act, or who shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this act, or who shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporations, or who shall wilfully remove out of the jurisdiction of the United States, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall wilfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than

\$1,000 nor more than \$5,000, or to imprisonment for a term of not more than 3 years, or to both such fine and imprisonment.

"If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for 30 days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure. * * *"

Certification.

Cost, income, and tonnage report of _____
(Name of operator.)
 for the month of _____ 19__
 approved and certified correct:
 To be signed by reporting operator. _____
(Name and title of officer.)
 Date _____ 19__.

Return all sheets of this form to the Federal Trade Commission. Do not fail to sign this sheet.

38 File No.
(Full name of reporting operator.)

Form C-51 Month of 19..
(Address of principal office.)

F. T. C.

Line No.	Accounts.	Amount.			Do not use (for F. T. C. only).		
		\$		c			
1	Labor:	*****	*****	*****	*****	*****	*****
2	Pick mining.....tons..						
3	Machine mining.....tons..						
4	Other operating labor.....						
5	Maintenance and repairs.....						
6	Mine office (clerks).....						
7	Superintendence, \$...engineering, \$....						
8						
9	Total labor.....						
10	Supplies (exclude power-house fuel):	*****	*****	*****	*****	*****	*****
11	Operating supplies.....						
12	Power purchased.....						
13	Maintenance and repairs.....						
14						
15	Total supplies.....						
16	Total operating cost (add lines 9 and 15).						
17	Net debits (in black) and credits (in red):	*****	*****	*****	*****	*****	*****
18	Supplies sold and miscellaneous revenue..						
19	Net operating cost (take line 16 and add or deduct line 18).....						
20	Fixed charges and general expenses:	*****	*****	*****	*****	*****	*****
21	Royalty.....tons @ \$.....per ton...						
22	Depletion.....tons @ \$.....per ton...						
23	Amortization—						
	(a) Development @ \$.....per ton...						
	(b) Stripping @ \$.....per ton...						
24	Depreciation.....						
	Fixed charges and general expenses carried forward.....						

Return all sheets of this form to the Federal Trade Commission.

38 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL.

39 File No.....
(Full name of reporting operator.)

Form C-51..... Month of.....19..
(Address of principal office.)

F. T. C.

Line No.	Accounts.	Amount.		(For F. T. C. only.)	
		\$	c		
25	Fixed charges and gen. expen. brought forward.....				
26	Officers' salaries.....				
27	Officers' expenses.....				
28	Office and clerical salaries.....				
29	General office expenses.....				
30	Taxes (except income and excess profits).....				
31	Insurance—General.....				
32	Insurance—Liability or compensation.....				
33				
34	Total fixed charges & general expenses.....				
35	Total mining cost (add lines 19 and 31).....				
36	Selling cost:.....	*****	*****	*****	*****
37	Officers' salaries, \$....., expenses, \$....				
38	Salesmen's salaries and expenses.....				
39	Commissions.....				
40	General sales office expenses.....				
41	Total selling cost.....				
42	Total mining & selling cost (add lines 35 and 41).....				

43 *Income statement.*

		\$	c		
44	Coal sales and transfers:.....	*****	*****	*****	*****
45	Commercial sales (line 75, column D)....				
46	Departmental transfers (line 75, column E).....				
47	Purchased coal sales (line 75, columns F. & G.).....				
48	Total sales and transfers.....				

Return all sheets of this form to the Federal Trade Commission.

FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL. 39

40 (Full name of reporting operator.) File No.
 Form C-51 Month of 19....
 F. T. C. (Address of principal office.)

Line No.	Accounts.	Amount.			Do not use (for F. T. C. only).		
		\$		c			
49	Cost of coal sold:	****	****	****	****	****	****
50	Mining and selling cost (line 42).....						
51	Coal inventory, deduct increase, add decrease (value shown on line 89).....						
52	Purchased coal cost.....						
53	Total cost of coal sold.....						
54	Profit from coal (subtract line 53 from line 48).....						
55	Miscellaneous income:	****	****	****	****	****	****
56	Net receipts from coke sales.....						
57	Royalty from owned or leased lands.....						
58	Interest and dividend.....						
59							
60	Total miscellaneous income.....						
61	Total income (add lines 54 and 60).....						
62	Deductions from income:	****	****	****	****	****	****
63	Taxes, income and excess profits.....						
64	Interest.....						
65							
66	Total deductions from income.....						
67	Net income (subtract line 66 from line 61).....						

REMARKS.
 (For use of reporting operator.)

MEMORANDUM.
 (For use of F. T. C. only.)

Return all sheets of this form to the Federal Trade Commission.

40 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL.

41 File No.
(Full name of reporting operator.)

Form C-51 Month of 19....
F. T. C. (Address of principal office.)

Do not include power-house fuel in any figures reported on this page.

COAL TONNAGE (net tons of 2,000 pounds. Do not report fractions of tons.)

Line No.	Grade of coal.	Sales of coal produced (exclude purchased coal).				Departmental transfers.	Purchased coal only.	
		(A) Local sales and coal to miners (tons).	(B) Sales to railroads (tons).	(C) Sales to other consumers (tons).	(D) Total commercial sales (add A, B, & C) (tons).	(E) Coal to coke ovens, own railroads, etc. (tons). ¹	(F) Sales to railroads (tons).	(G) Sales to other consumers (tons).
68.	Prepared.....							
69.	Run of mine.....							
70.	Slack.....							
71.	Total.....							

COAL SALES.

	\$	c	\$	c	\$	c	\$	c	\$	c	\$	c	\$	c
72.	Prepared.....													
73.	Run of mine.....													
74.	Slack.....													
75.	Total.....													

GENERAL INFORMATION.

Number or name of mine.	Number days worked.	Average number of men employed per day worked.		Total number of men on pay roll during month.		Location of mine.		Number or name of seam.	Average thickness of seam (inches).
		Miners.	Day men.	Miners.	Day men.	State.	County.		
76.....									
77.....									
78.....									
79.....									
80.....									
81.....									
82.....									

¹ Do not include power-house fuel.

Return all sheets of this form to the Federal Trade Commission.

42 File No.
 (Full name of reporting operator.)
 Month of 19....
 (Address of principal office.)
 Form C-51
 F. T. C. Coal tonnage statement (exclude purchased coal).

(All tonnage should be reported in net tons of 2,000 pounds. Do not report fractions of tons.)

Line No.	Tons.		Tons.	
83. Total sales (line 71, col. D).....			XXXXXXX	XXXXXXX
84. Departmental transfers (line 71, col. E).....			XXXXXXX	XXXXXXX
85. Coal in transit not invoiced (value, \$.....)			XXXXXXX	XXXXXXX
86. Total sales, transfers, and coal in transit not invoiced.....	XXXXXXX	XXXXXXX		
87. Coal stored at beginning of period (value, \$.....)			XXXXXXX	XXXXXXX
88. Coal stored at end of period (value, \$.....)			XXXXXXX	XXXXXXX
89. Increase (add) or decrease (deduct) (value, \$.....)	XXXXXXX	XXXXXXX		
90. Net production of coal (divisor) (take line 89 and add to or deduct from line 86).....	XXXXXXX	XXXXXXX		
91. Production tonnage (tipple weights).....	XXXXXXX	XXXXXXX		
92. Power-house fuel (value, \$.....)			XXXXXXX	XXXXXXX
93. Slate and other waste in preparation.....			XXXXXXX	XXXXXXX
94. Total coal and waste not realized on.....	XXXXXXX	XXXXXXX		
95. Net production of coal (subtract line 94 from line 91).....	XXXXXXX	XXXXXXX		

Return all sheets of this form to the Federal Trade Commission.

(Full name of reporting operator.)

File No.

(Address of principal office.)

Line No.	Assets.	Detail.			Total.			Do not use (for F. T. C. only).
		\$		c	\$		c	
101	Cash in bank and on hand....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
102	Accounts receivable—current....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
103	Notes receivable—current.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
104	Inventories (a).....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
105	“ (b).....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
106	Subtotal of current assets.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
107	Less reserve for doubtful accounts.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
108	Total current assets.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
109	Insurance paid in advance....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
110	Taxes paid in advance.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
111	Royalties paid in advance.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
112	Stripping done in advance.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
113		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
114	Total deferred assets.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
115	Intercompany (affiliated) accounts, notes, and loans receivable.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
116	Stock of other companies.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
117	Bonds of other companies.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
118	Mortgages.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
119	Real estate not used in coal production.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
120		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
121	Total investments.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
122	Coal lands.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
123	Surface lands.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
124	Buildings.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
125	Machinery and equipment.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
126	Development charges.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
127	Office furniture and fixtures....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
128	Subtotal of fixed assets.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
129	Less reserves for depletion \$— and depreciation \$—	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
130	Total fixed assets.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
131	Good will.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
132	Leaseholds.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
133	Property rights.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	
134	Total assets.....	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	

Balance sheet as at _____ 19 .

File No. _____

(Full name of reporting operator.) _____

(Address of principal office.) _____

Line No.	Liabilities.	Detail.		Total.		Do not use (for F. T. C. only).		
		\$	c	\$	c			
135	Trade accounts payable.....			XXXXXXXXXX	XXXXX			
136	Trade notes payable.....			XXXXXXXXXX	XXXXX			
137	Wages accrued.....			XXXXXXXXXX	XXXXX			
138				XXXXXXXXXX	XXXXX			
139				XXXXXXXXXX	XXXXX			
140				XXXXXXXXXX	XXXXX			
141	Total current liabilities.....	XXXXXXXXXX	XXXXX					
142	Taxes.....			XXXXXXXXXX	XXXXX			
143	Interest.....			XXXXXXXXXX	XXXXX			
144	Unclaimed wages.....			XXXXXXXXXX	XXXXX			
145				XXXXXXXXXX	XXXXX			
146	Total accrued liabilities.....	XXXXXXXXXX	XXXXX					
147	Intercompany (affiliated) ac- counts, notes, and loans pay- able.....	XXXXXXXXXX	XXXXX					
148	Capital, stock—preferred— shares.....	XXXXXXXXXX	XXXXX					
149	Capital, stock—common— shares.....	XXXXXXXXXX	XXXXX					
150	Bonds—%.....	XXXXXXXXXX	XXXXX					
151	Mortgages—%.....	XXXXXXXXXX	XXXXX					
152	Loans and notes payable, bank or open accounts.....	XXXXXXXXXX	XXXXX					
153		XXXXXXXXXX	XXXXX					
154	Appropriated surplus.....	XXXXXXXXXX	XXXXX					
155	Dividends declared, not paid....	XXXXXXXXXX	XXXXX					
156		XXXXXXXXXX	XXXXX					
157	Surplus.....	XXXXXXXXXX	XXXXX					
158		XXXXXXXXXX	XXXXX					
159		XXXXXXXXXX	XXXXX					
160		XXXXXXXXXX	XXXXX					
161		XXXXXXXXXX	XXXXX					
162		XXXXXXXXXX	XXXXX					
163	Total liabilities.....	XXXXXXXXXX	XXXXX					

Balance sheet certified correct and in accordance with the books.

(Name.) _____

(Title of officer.) _____

Form I. S.
F. T. C.

Exhibit "E."

F. T. C. File No. _____

Federal Trade Commission report for coke industry.

(Full name of reporting company.)

(Address of principal office)

_____, 19____
(Month)

46

Notice.

Attention is directed to the following extract from "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914:

"That the commission shall also have power * * *

"Section 6 (b). To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. * * *

"Section 10. * * * Any person who shall wilfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this act, or who shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this act, or who shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporations, or who shall wilfully remove out of the jurisdiction of the United States, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall wilfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than 3 years, or to both such fine and imprisonment."

"If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the commission

for filing the same, and such failure shall continue for 30 days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure. * * *

Certification.

Coke Industry report of _____
(Name of company.)
for the month of _____, 19____.

Approved and certified correct:
To be signed by an official of the company. _____
(Name and title of officer.)
Date _____, 19____.

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F. T. C. File No.

(Full name of reporting company.)

Month of 19....

(Address of principal office.)

III. Sales prices.

By sales prices is meant the actual realization f. o. b. ovens. Return to be made for each product specified below; it will be sufficient to show data for 80 per cent of the quantity of said shipments of each product specified provided that only the smallest shipments are the ones omitted and the percentage reported is stated. For any unusual realization an explanation should be attached.

Name of product.	Quantity (net tons).			Value (omit cents).			Average realization per net ton.			Percent- age reported.
				\$			\$		c	
Shipments (exclusive of inter- company or interdepartment transfers):										
Coke, bee hive										
Coke, by-product										

IV. Contract prices.

By contract price is meant the price f. o. b. ovens. The term "Contract" is intended to cover all agreements for the sale of specified commodities whether by formal written agreements or orders booked (exclusive of intercompany contracts with subsidiary companies and interdepartment transfers). Return to be made for each product specified below; it will be sufficient to show data for 80 per cent of the quantity of said contracts of each product specified, provided that only the smallest contracts are the ones omitted, and the percentages reported is stated. For any unusual prices an explanation should be attached.

Name of product.	Quantity (net tons).			Value (omit cents).			Average price per net ton.			Percent- age reported.
				\$			\$		c	
Sales contracts entered into dur- ing month:										
Coke, bee hive										
Coke, by-product										

49
(Full name of reporting company.)

F. T. C. File No.

..... Month of 19....
(Address of principal office.)*V. Capacity of ovens.*

With respect to kinds of ovens specified below state estimated annual capacity, in net tons, as of January 1, 1929, in the January report, and in case any change occurs therein during subsequent months report same in the report for the month during which the change occurred, otherwise enter on schedule "no change." By estimated annual capacity is meant the quantity of the product which the plant equipment in question could produce if run under normal conditions of operation full time, less average time necessary for repairs, etc. If sufficient space is not provided in form below attach securely additional sheets showing information as provided by the form.

Kind.	PLANT.		Estimated annual capacity (net tons).	
	Name.	Location.		
Bee-hive ovens				
By-product ovens				

VI. Orders.

For products specified in schedule below state the quantities of orders in net tons booked during the month and the quantities of unfilled orders outstanding at the end of the month. Entries in column "Quantities booked during month" should not include intercompany orders to or from subsidiary companies.

Name of product.	Quantities booked during month.			Unfilled orders at end of month.		
Coke, bee-hive						
Coke, by-product						

VII. Depreciation and general and administrative and selling expenses.

If you have made any estimate or actual allocation between products of depreciation or of general administrative and selling expenses (other than that included on your cost sheets) show below the rates so estimated or used for the products specified.

Name of product.	Depreciation (per net ton).			General admin. & selling expenses (per net ton).			Indicate whether actual or estimate.
Coke, bee-hive	\$		c	\$		c	
Coke, by-product							

50
(Full name of reporting company.)

F. T. C. File No.

.....
(Address of principal office.)

Month of 19

VIII. *Income statement.*

Period

Item.	Detail.				Total.			
	XXXX	XXXX	XXXX	XXXX				
Sales	XXXX	XXXX	XXXX	XXXX				
Cost of sales (see note below)					XXXX	XXXX	XXXX	XXXX
Depreciation, general and administrative and selling expenses (not included in cost of sales)					XXXX	XXXX	XXXX	XXXX
	XXXX	XXXX	XXXX	XXXX				
Net income from operations	XXXX	XXXX	XXXX	XXXX				
Income from other sources (Schedule 1)	XXXX	XXXX	XXXX	XXXX				
Total net income	XXXX	XXXX	XXXX	XXXX				
Deductions from net income (Schedule 2)	XXXX	XXXX	XXXX	XXXX				
Balance of net income transferred to surplus	XXXX	XXXX	XXXX	XXXX				

NOTE.—There shall not be included in cost of sales any of the following items, which are to be reported elsewhere: Federal income and excess profits taxes, interest on bonds, interest on notes, sinking fund provisions, discounts on bonds and notes, losses on investments, amortization of excess cost of construction, losses on contracts, reorganization expense, fire losses, donations (exclusive of welfare work), adjustments of property values, bonuses to officers.

50 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL.

51 File No.
(Full name of reporting company.)

..... Month of 19....
(Address of principal office.)

Income statement. Schedule 1.

Details of income from other sources. Designate the amounts received from investments or sources unrelated to the coal and coke business.

	\$			c
Interest				
Rentals				
Cash discounts on purchases				
Royalties				
Dividends, from affiliated or subsidiary companies				
Income from outside investments				
Total				

52 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL.

53 F. T. C. File No.

(Full name of reporting company.)

Month of 19....

(Address of principal office.)

IX. Balance sheet as at

.....19

Assets.	Detail.				Total.			
Cash in bank and on hand					XXXX	XXXX	XXXX	XXXX
Accounts receivable—current					XXXX	XXXX	XXXX	XXXX
Notes receivable—current					XXXX	XXXX	XXXX	XXXX
Inventories					XXXX	XXXX	XXXX	XXXX
Subtotal of current assets					XXXX	XXXX	XXXX	XXXX
Less: Provision for doubtful accounts					XXXX	XXXX	XXXX	XXXX
					XXXX	XXXX	XXXX	XXXX
Total current assets	XXXX	XXXX	XXXX	XXXX				
Insurance					XXXX	XXXX	XXXX	XXXX
Taxes					XXXX	XXXX	XXXX	XXXX
					XXXX	XXXX	XXXX	XXXX
Total prepayments	XXXX	XXXX	XXXX	XXXX				
Notes and loans receivable					XXXX	XXXX	XXXX	XXXX
Stocks of affiliated or subsidiary companies					XXXX	XXXX	XXXX	XXXX
					XXXX	XXXX	XXXX	XXXX
Total intercompany accounts	XXXX	XXXX	XXXX	XXXX				
Stocks and bonds of other companies					XXXX	XXXX	XXXX	XXXX
Real estate not used in coal and coke production					XXXX	XXXX	XXXX	XXXX
					XXXX	XXXX	XXXX	XXXX
Total investments	XXXX	XXXX	XXXX	XXXX				
Mineral properties					XXXX	XXXX	XXXX	XXXX
Development and stripping in advance					XXXX	XXXX	XXXX	XXXX
Subtotal of fixed assets					XXXX	XXXX	XXXX	XXXX
Less: Depletion					XXXX	XXXX	XXXX	XXXX
Real estate and buildings					XXXX	XXXX	XXXX	XXXX
Machinery and equipment					XXXX	XXXX	XXXX	XXXX
Office furniture and fixtures					XXXX	XXXX	XXXX	XXXX
Subtotal of fixed assets					XXXX	XXXX	XXXX	XXXX
Less: Depreciation					XXXX	XXXX	XXXX	XXXX
Total fixed assets	XXXX	XXXX	XXXX	XXXX				
Good will, patents, etc.	XXXX	XXXX	XXXX	XXXX				
	XXXX	XXXX	XXXX	XXXX				
Total	XXXX	XXXX	XXXX	XXXX				

54 F. T. C. File No.
(Full name of reporting company.)
..... Month of 19....
(Address of principal office.)

IX. Balance sheet as at
..... 19

Liabilities.	Detail.				Total.			
Trade accounts payable					XXXXX	XXXXX	XXXXX	XXXXX
Trade notes payable					XXXXX	XXXXX	XXXXX	XXXXX
Wages accrued					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total current liabilities	XXXXX	XXXXX	XXXXX	XXXXX				
Taxes					XXXXX	XXXXX	XXXXX	XXXXX
Interest					XXXXX	XXXXX	XXXXX	XXXXX
Unclaimed wages					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total accrued liabilities	XX XXX	XXXXX	XXXXX	XXXXX				
Notes and accounts payable					XXXXX	XXXXX	XXXXX	XXXXX
					XXXXX	XXXXX	XXXXX	XXXXX
Total intercompany accounts	XXXXXX	XXXXXX	XXXXXX	XXXXX				
Capital stock:								
Preferred shares					XXXXXX	XXXXXX	XXXXXX	XXXXX
Common shares					XXXXXX	XXXXXX	XXXXXX	XXXXX
	XXXXXX	XXXXXX	XXXXXX	XXXXX				
Bonds								
Mortgages								
Loans and notes payable, bank or open account								
Appropriated surplus								
Surplus (Schedule 1)								
Total								

State against item of inventories whether they are at cost and if not on what basis.
State against each item of fixed assets whether the values are the cost of acquisition
or value based on reappraisal.
Certified correct and in accordance with the books.
Name.....
.....
(Title of officer.)

54 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL.

..... F. T. C. File No.
(Full name of reporting company.)

..... Month of 19..
(Address of principal office.)

Balance sheet, Schedule 1.

	\$			c
Surplus at beginning of period				
Add—Credits made in 1919, applicable to prior periods				
Deduct—Charges made in 1919, applicable to prior periods				
Adjusted surplus as at beginning of period				
Add—Net income for year, 1919				
Deduct dividends				
Surplus at end of year as shown on balance sheet				

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Exhibit "D1."

Instructions for compiling semibituminous, bituminous, or subbituminous coal or lignite reports on cost, income, and tonnage.

Operators producing 12,000 net tons or over per annum shall file monthly reports.

All tonnage reported shall be on a net ton basis of 2,000 pounds. Fractional parts of tons are not to be shown, but should be adjusted to the nearest whole ton, so that the various items will add to the total shown.

The description of items to be charged to each account shall be closely followed. Any deviation from these instructions must be

fully explained. Your attention is directed to the fact that the total net income on line 67 shall agree with the figures shown in the profit-and-loss account of your books. If for any reason these figures do not agree, the difference shall be fully explained, so that the commission's agents can readily check the monthly reports into the general books.

OPERATING COSTS.

The several general accounts, viz, labor, supplies, net debits and credits to operating cost, fixed charges and general expenses and selling cost, are designed to show expenditures made in connection with the mining, preparation, and sale of coal or lignite. Revenue from and expenses of indirect or nonmining properties are not to be included on lines 1 to 42, inclusive. Such revenues and expenses shall be kept in separate accounts and the net income therefrom shown on lines 55 to 60, "Miscellaneous income."

LABOR.

The primary accounts under this general account shall include the expenditures made for labor employed in connection with the operation of the mine and the preparation facilities and in repairing mine structures and equipment. Labor costs for additions, betterments, improvements, and developments shall not be charged to these primary accounts. Deductions from pay roll, such as smithing, dwelling rents, and similar items shall be shown on line 18.

Lines 2 and 3. "Pick mining" shall include wages paid to pick miners, and "Machine mining" shall include wages paid to machine miners, who are paid only on a tonnage basis. The per ton rate for each method of mining should be shown on the respective lines. The wages paid to miners' helpers, shot firers, and loaders of room, pillar, and entry coal, whether paid by the car, ton, or day, as well as wages of other labor pertaining to the mining of coal, shall be included on line 4, "Other operating labor." This latter account shall also include the amounts paid for yardage, dead work, ventilation, drainage, timbering, haulage, removing stripped coal, washery, power house, and all labor in and around the mine not provided for in the other accounts under the head of labor.

Labor in connection with the washing or other special preparation of coal to be coked, or any other labor in connection with the manufacture of coke shall not be included here, but shall be charged to the coking operation.

Line 5. "Maintenance and repairs" shall include wages paid for maintaining and repairing mine structures, mining machinery and equipment, and miners' dwellings.

Line 6. "Mine office" shall include only the salaries paid clerks at the mines.

Line 7. "Superintendence and Engineering" shall include: (a) the salaries paid mine superintendents, mine foremen or bosses and their assistants, and (b) the salaries of fees paid mining engineers and assistants. Superintendence and engineering in connection with coking operations shall not be included here.

SUPPLIES.

Under this general account shall be included the cost of materials and supplies used during the month covered by the report in operating the mine and facilities, and in maintaining and repairing mine structures and equipment. Supplies used for additions, betterments, improvements, and developments shall not be charged to these primary accounts.

Line 11. "Operating supplies" shall include the cost of mine timbers, props, ties, etc.; feed, bedding, and other stable supplies; washery and power-house supplies; and general operating supplies not included in other supply accounts.

Line 12. "Power purchased" shall include the cost of power (electric, compressed air, gas, or steam) purchased and used for operating purposes. Power-house fuel is not to be included.

Line 13. "Maintenance and repairs" shall include the cost of supplies used during the month covered by the report in maintaining and repairing mine structures, mining machinery, and equipment; and miners' houses.

NET DEBTS AND CREDITS TO COST.

Line 18. "Supplies sold and miscellaneous revenue" shall include: (a) the net loss or gain from the sale of explosives, lamps, or other mine supplies sold to miners by the operator; (b) revenue from smithing; (c) revenue from heat, light, and power when the cost of producing same has been included in the labor and supply accounts; (d) rents received from houses and tenements occupied by miners or other employees at the mines; (e) debits or credits not otherwise provided for, which apply directly to operating costs.

FIXED CHARGES AND GENERAL EXPENSES.

Line 21. "Royalty" shall include royalty paid or accrued upon tonnage mined from leased lands. The charge shall be determined by multiplying the tonnage actually mined during the period reported by the rate per ton specified in such lease or leases. Any payment made at the time of entering into the lease, not by way of advanced royalty, shall be written off under the heading of depletion.

When the lease or royalty agreement contains a minimum provision and the tonnage mined during the period is below the minimum the difference between the royalty paid on a per ton basis and the minimum payment shall be charged to the deferred asset account "Royalties paid in advance." The subsequent accounting for such advanced royalty shall be as follows:

(1) If at a later date there is a recovery of coal for which royalty has been advanced, such recovered royalty shall be charged to this account at the per ton rate specified in the lease; or

(2) If the period during which the recovery may be made under the lease has expired, leaving a balance in the asset account against such lease, this unrecoverable royalty or balance shall be specified on line 33 at the expiration of such period.

NOTE.—No charge shall be made to this account for royalty paid on leases from which no coal has been mined by the reporting operator.

Line 22. "Depletion" shall apply only to the exhausting of a mineral deposit actually owned in fee by the operating company or to the writing off of the premium paid on acquisition of a leasehold. It should in all cases be the amount arrived at by dividing the actual amount paid for the property or leasehold, less the estimated cost of surface lands, by the estimated number of tons of recoverable coal contained in the property at the time of acquisition. Any revaluations of the property to determine a depletion rate for use in reports for other purposes shall not be used as the amount to be depleted in this report; actual cost, in all cases, being the amount to be used. The charge in any month shall be determined by multiplying the tonnage mined from the land owned in fee by the rate per ton obtained as above.

Line 23. "Amortization," (a) Development. The per ton rate for this account shall be obtained by dividing the cost to the present owner of driving the main tunnel, shaft, slope, or drift, plus the estimated cost of the number of feet of main tunnel to be driven, by the estimated tonnage recoverable through such development. The charge to this account in any month shall be determined by multiplying the tonnage obtained through this development by the per ton rate. (b) Stripping shall include corresponding debits to any credits to the deferred asset account, "Stripping done in advance." (See explanation under line 112, page 7, of these instructions.)

Line 24. "Depreciation" shall be charged with one-twelfth of the annual charge for depreciation of all mine buildings, dwellings, and equipment. This charge should be determined by dividing the original cost or purchase price, less salvage value, by the estimated service life of such buildings, dwellings, or equipment.

Do not calculate depreciation on the same basis as depletion which is only dependent on the estimated number of tons of recoverable coal.

NOTE.—When a mine building, dwelling, or unit of equipment is retired from service and replaced with property of a like purpose, the fixed asset account should be charged with the cost of the new property and credited with the book value of the property retired. Reserve for depreciation should be charged correspondingly with the book value. The difference between the amount of depreciation accrued with respect to this property (plus salvage value, less cost of removal or demolishing), and its book value should be charged to surplus.

Line 26. "Officers' salaries" shall include that part of the officers' salaries allocated to coal mining. Such portion of the salaries as is chargeable to selling expense should be shown on line 37. "Officers" should only include the president, vice president, treasurer, secretary, etc., who are elected and whose salaries are fixed under the by-laws or by the board of directors of the company.

Line 27. "Officers' expenses" shall include that part of the officers' expenses allocated to coal mining. Such portion of the expenses as is chargeable to selling expense should be shown on line 37.

Line 28. "Office and clerical salaries" shall include the salaries of clerks, bookkeepers, stenographers, and other employees in the general offices of the company.

Line 29. "General office expenses" shall include such items as stationery, printing, postage, telephone, telegrams, and other miscellaneous expenses applying to both the general office and the mine office.

Line 30. "Taxes" shall include a monthly charge of one-twelfth of the State, county, school, and other local taxes paid or accrued during the year on mining property, office buildings, and dwellings occupied by employees at the mines. No Federal income or excess-profits taxes shall be included in this account.

Line 31. "Insurance general" shall include a monthly charge of one-twelfth of the annual premiums paid for fire, boiler, or other general insurance on all property used for mining purposes.

Line 32. "Insurance liability or compensation" shall include payments or charges resulting from the operator's liability for accident to employees: (1) If liability insurance is carried with private companies or with the State, this account shall include the amount paid or accrued during the month; (2) if the company elects to bear its own risk and provides no reserve, the actual payments due to injuries to employees shall be charged to this account; (3) if the company elects to bear its own risk and provides a reserve, the rate used in determining the monthly charge to this account shall not exceed the rate specified by the State or by private insurance companies. Where a reserve is provided all payments due to injuries to employees shall not be charged to this account, but shall be charged to the reserve.

Expenses incurred in operating or maintaining company hospitals, salaries or fees of surgeons and physicians, and legal expenses arising from claims due to injuries to employees shall also be included in this account.

SELLING COST.

Line 37. "Officers' salaries and expenses" shall include that part of officers' salaries and expenses allocated to the sale of coal. The salaries and expenses shall be shown separately, as indicated.

Line 38. "Salesmen's salaries and expenses" shall include the salaries and expenses of salesmen engaged in selling coal. If the salesman is paid a specified salary and also receives additional bonuses or commissions on sales, such additional compensation shall also be included in this account.

Line 39. "Commissions" shall include only the commissions paid to brokers or jobbers for selling coal.

Line 40. "General sales office expenses" shall include the salaries of clerks, bookkeepers, and other employees in the general sales office. Expenditures for printing, stationery, etc., in connection with the sales office shall also be included in this account.

INCOME STATEMENT.

Line 45. "Commercial sales" shall include the revenue from produced coal sold locally and to miners, to railroads not owned by the

reporting operator, and to general consumers. The revenue shown here should check with that shown on line 75, column D, and should be the net amount after deducting (a) freight paid by the operator on coal shipped, (b) allowances on bills, and adjustments due to errors in billing coal.

Line 46. "Departmental transfers" shall include the value, as shown by the operator's books, of produced coal transferred to the operator's own coke ovens, railroads, steamboats, etc. Coal transferred at the cost of production to an affiliated or subsidiary company operated by the producer (for example, lime kiln, cement plant, glass works, etc.) shall also be included. Coal transferred to the power house shall not be included.

Line 47. "Purchased coal sales" shall include the revenue from sales of purchased coal.

COST OF COAL SOLD.

Line 51. "Coal inventory." On this line insert the increase or decrease which has taken place between the inventory value of coal on hand at the close of the month and that at the beginning of the month. This amount should check with the value shown on line 89, sheet 5.

MISCELLANEOUS INCOME.

Line 56. "Net receipts from coke sales" shall consist of revenues from coke sales less the costs of operating the coke ovens. The net income only shall be shown.

Line 57. "Royalty from owned or leased lands" shall include the royalties received from lands leased or subleased to other operators.

Line 58. "Interest and dividends" shall include the interest and dividends received from securities owned by the reporting operator.

Line 59. Itemize here any miscellaneous income not provided for elsewhere.

DEDUCTIONS FROM INCOME.

Line 63. "Taxes—income and excess profits" shall include one-twelfth of the estimated Federal income and excess-profits taxes to be paid on the current year's operations.

Line 64. "Interest" shall include interest on bond issues, mortgages, or other indebtedness of the reporting operator.

Line 65. Itemize here any deductions from income not provided for elsewhere.

ANALYSIS OF TONNAGE AND SALES.

All tonnage shall be reported on a net-ton basis of 2,000 pounds. Fractional parts of a ton are not to be shown, but should be adjusted to the nearest whole ton, so that the various items will add to the total shown. Power-house fuel shall not be included. Sales and transfers of produced coal only shall be shown in columns A, B, C, D, and E. Purchased coal must be shown separately in columns F

and G. The amounts to be reported in columns D, E, F, and G lines 72 to 75, shall be determined as outlined under the description of lines 45, 46, and 47, "coal sales and transfers." By "coal sales" is meant transactions in which bills have been rendered or payment made and the amounts have been entered on the general books as a credit to the sales account. Uncompleted transactions, such as unfilled orders or unbilled shipments, which have not been entered on the general books shall not be reported as sales.

COAL TONNAGE STATEMENT.

Line 83. Total sales shall show the tonnage of all commercial sales of produced coal and should check with the total shown on line 71, column D.

Lines 87 and 88. The values on these lines shall be based on the per ton cost of mining plus any transportation charges to storage points.

Line 91. Production tonnage. On this line should be shown the tippie weights of the entire production. Power-house fuel and slate and waste in preparation shall be subtracted to arrive at the net production shown on line 95.

BALANCE SHEET.

The accounts shown are self-explanatory, with the possible exception of the following:

Line 111. "Royalties paid in advance." Where a royalty lease carries a minimum clause with a recoverable period, any payments made in excess of the amount paid for coal actually mined shall be charged to this account.

Line 112. "Stripping done in advance." All expenditures for stripping the overburden from coal materially in advance of the actual recovery of the coal shall be charged to this account. As the coal is recovered the cost of removing this overburden shall be prorated on a tonnage basis and charged in the monthly report to "Amortization," (b) Stripping, line 23. The amount to be charged monthly to this account as cost should be determined by using a fixed rate per ton, which rate should be ascertained by dividing the estimated or actual total cost of removing the overburden by the estimated tonnage of coal recoverable. Appropriate credit should be made to this asset account, which should carry the total charge for stripping, less the credit for the prorated amounts charged to cost.

Lines 122 to 125, inclusive. State in the blank space on each line after the title whether the amount entered in the column are actual costs or appraised values.

Letters from Federal Trade Commission to companies re report for iron and steel industry.

Exhibit "F."

FEBRUARY 16, 1920.

Report for iron and steel industry.

GENTLEMEN :

A number of inquiries have been received in regard to the proper entries to be made in Schedule IV, "Contract Prices," and Schedule VI, "Orders." The following additional instructions are therefore given for making these returns.

SCHEDULE IV, CONTRACT PRICES.

The term "Contract" is intended to cover all agreements for the sale of specified commodities whether by formal written agreements or orders booked (exclusive of intercompany contracts with subsidiary companies and interdepartment transfers).

SCHEDULE VI, ORDERS.

Entries in column "Quantities booked during the month" should not include intercompany orders to or from subsidiary companies.

Very respectfully,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Exhibit "F1."

MARCH 5, 1920.

Report for iron and steel industry.

GENTLEMEN :

The enclosed forms are for use in submitting your report for the iron and steel industry for the month of February. The report, in accordance with the commission's letter of January 19, a copy of which is enclosed, should be submitted not later than March 25, 1920.

By direction of the commission.

J. P. YODER,
Secretary.

Exhibit "F2."

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WASHINGTON, March 20, 1920—6.50 p. m.

Referring to commissions letter January nineteenth nineteen twenty iron and steel report Please mail report immediately or wire collect when it will be sent.

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Exhibit "F3."

Report for iron and steel industry.

MARCH 20, 1920.

GENTLEMEN:

Under date of March 10th the commission wired your company as follows:

"Referring to commission's letter, January 19, 1920, iron and steel report, please mail report immediately or wire collect when it will be sent.

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

No reply has been received to this message and inasmuch as the commission wishes to close its January summaries promptly, it will be appreciated if the report is mailed at once if you have not already done so. Your cooperation in this matter will be appreciated.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.
Per DLW.

Exhibit "F4."

Report for iron and steel industry.

APRIL 6, 1920.

GENTLEMEN:

The inclosed forms are for use in submitting your report for the iron and steel industry for the month of March. The report, in accordance with the commission's letter of January 19, should be submitted not later than April 25, 1920.

By direction of the commission.

J. P. YODER, *Secretary.*

63

Exhibit "F5."

Report for iron and steel industry.

MAY 6, 1920.

GENTLEMEN:

The commission has received numerous inquiries recently as to whether, in view of the recent decision in the Maynard Coal Company case, it would continue to require monthly reports from iron and steel producing companies.

The commission believes that this information is useful and important to the general public, and also to the iron and steel industry. It seems that a large number of the companies realize this situation.

Therefore, the commission will continue to require these reports in the manner provided by the Federal Trade Commission act.

The order recently made by the District of Columbia Supreme Court in respect to the Maynard Coal Company put that company under bond to pay the penalties provided for by law in the event the final decision should be in favor of the commission, and meantime the commission is restrained only from proceeding against that company.

Your reports for the months of January, February, and March are past due and it is therefore requested that these reports be filed at once.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Exhibit "F6."

Report for iron and steel industry.

MAY 12, 1920.

GENTLEMEN:

The inclosed forms are for use in submitting your iron and steel industry report for the month of April, which should be filed not later than May 31, 1920.

Your attention is directed to Schedule VIII (income statement), which, in accordance with the commission's letter of January 19th, should be completed for the quarter ended March 31, 1920.

By direction of the commission.

J. P. YODER, *Secretary.*

64

Exhibits "G" to "G20."

Letters from Federal Trade Commission to companies re report for coal accounting (bituminous) and report for coke industry.

65

Exhibit "G."

JANUARY 16, 1920.

GENTLEMEN:

By this time you should have received copies of the commission's forms for reporting monthly cost, income, and tonnage of bituminous coal or lignite operators, also forms for annual balance sheet, and instructions for preparing them. In order that there may be no misunderstanding or delays in correspondence, and to check the accuracy of the mailing list, it is requested that operators fill out the attached form in full and return it to the commission at the earliest possible date.

The commission is desirous of receiving the cost reports and balance sheets regularly and promptly, and would greatly appreciate your cooperation in this matter. It is planned to publish monthly

cost data relative to the coal industry, and, for this reason, your reports should be filed as prescribed so that the data may be complete and up to date.

The forms sent you were for your cost, income, and tonnage report for the month of January, 1920, and for your balance sheet as of December 31, 1919, or the end of your last fiscal year. Blanks will be sent you in ample time for filing reports for subsequent months. Extra copies of blanks and instructions will be supplied upon request. The instructions are intended to fully cover all items in the cost, income, and tonnage report, and balance sheet, except a few which obviously need no comment. However, inquiries in regard to any item not entirely clear will receive a prompt reply.

Much time will be saved to operators and the commission if the employee who makes out the reports is instructed to see that each item is clearly and correctly entered, with an explanation of any unusual amount; additions and subtractions correctly made; name, address, and month correctly entered on each sheet; and, finally, that the certification is properly made, as no reports will be accepted unless properly signed.

Operators who have mines in more than one district or field, and who are therefore required to file a separate report for each district or field will receive notice within a few days as to the number of monthly reports required, and the operations to be included on each report. Until further notice such districts or fields will be those last designated by the engineers committee of the Fuel Administration.

Inclosed find an envelope requiring no postage for the return of the attached sheet.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

66

Exhibit "G1."

This sheet is to be promptly returned to the Federal Trade Commission

1. If there is any change in the name or address as shown above, please indicate same on the following lines:

2. If succeeded or purchased by an individual or company, please give new operator's name, address, and date of transfer on the following lines:

3. If your operations were suspended during 1919 for any reason give full information, whether mine was exhausted, flooded, abandoned, etc.:

4. The total tonnage, by months, for the calendar year 1919, produced by the operator whose name appears at the head of this sheet, was as follows:

(Net tons of 2,000 pounds. Do not report fractions of tons.)

Months.	Tons.	Months.	Tons.
		Total brought forward	
January		July	
February		August	
March		September	
April		October	
May		November	
June		December	
Total carried forward		TOTAL	

5. Any general remarks: -----

(Name and title of officer.)

67

Exhibit "G2."

JANUARY 20, 1920.

GENTLEMEN:

Upon representations from a large number of operators that their records are not kept in such manner as to permit the submission of a monthly cost report as early as the 20th day of the month following that for which the report is made, the requirement for the date on which reports should be mailed has been changed as follows: Reports should be mailed to the commission on or before the first day of the second month following the month covered by the report.

Very truly yours,

FEDERAL TRADE COMMISSION,
J. P. YODER, *Secretary*.

Exhibit "G3."

JANUARY 31, 1920.

Important notice.

GENTLEMEN:

The commission wishes to call your attention to a slight error which crept into the first run of the mimeograph copies of its new cost form C-51, which it was thought might lead to confusion. The error, which has since been corrected, is as follows:

Line 35 on page 2 of the cost form reads, "Total mining cost (add lines 9, 19, and 34)." The first figure "9" should be omitted. Operators are requested to examine the copies of the cost form recently sent them, and if line 9 is specified to see that it is crossed out.

As a result of statements from a number of operators relative to their practice in handling certain accounts and items, as well as inquiries made concerning the proper reporting of the same, the commission is forwarding herewith supplemental instructions for certain specified lines of its cost form C-51. These instructions supersede those for the same lines in the instruction books, and it is hoped they will clarify the original instructions and simplify the reporting of such items.

It is suggested that the attached page No. 8 be bound in with the other 7 pages comprising the books of instructions.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER, *Chief Economist.*

68

Exhibit "G4."

Supplemental instructions.

The instructions given below supersede or amend those for similar items shown in the original set of instructions.

Line 2. "Pick mining" shall include the total wages paid to pick men, helpers, shot firers, etc., whether paid by the car, ton, or day; also wages of other labor pertaining to the direct mining of coal by pick or hand, which under certain conditions are included in the mining wage rate. State in the blank space on this line the number of net tons pick mined during the month. Disregard the requirement of the rate per ton.

Line 3. "Machine mining" shall include the total wages paid to undercutters and loaders, whether paid by the car, ton, or day; also wages of other labor pertaining to the direct mining of coal by machine, which under certain conditions are included in the mining wage rate. State in the blank space on this line the number of tons mined by machine during the month. Disregard the requirement of the rate per ton.

If operators do not keep records enabling them to separate between wages paid for pick and machine mining they may combine lines 2 and 3 and show the total wages in one amount.

Line 4. "Other operating labor" shall include the wages paid for yardage and deadwork (except the cost of sinking shafts, driving

tunnels, slopes, and planes over 50 feet in length through rock or material other than coal which shall be charged to an asset account "development"), ventilation, drainage, timbering, haulage, removing stripped coal, washery, power house, and all other labor in and around the mine not provided for in the other accounts under the head of "Labor."

Line 91. Production tonnage. On this line shall be shown the tippable weights of the entire production if available from existing records. The total of the tonnage used at the power house (line 92) and the slate and waste in preparation (line 93) shall be shown on line 94, and this latter figure shall be subtracted from line 91 to arrive at the net production (line 95).

The compilation of the figures requested on lines 91-95 is entirely optional with the operator. Any difference between the tonnage figures on lines 90 and 95 will show losses incurred through shipping.

Exhibit "G5."

FEBRUARY 10, 1920.

GENTLEMEN :

On January 16th the commission mailed you a letter, and questionnaire to be filled in relative to your official name, present mail address, 1919 tonnage by months, etc., and further requested that the questionnaire be returned promptly to this office. According to the commission's records as of this date, the blank form mailed you has not been received.

The commission is very desirous of having its 1920 records of coal operators as complete and accurate as possible to prevent unnecessary delays in correspondence. In order that there will be no further loss of time in this matter, and assuming that the questionnaire previously mailed was not received, or, if received, has been mislaid, another copy is attached hereto for your use. Will you please have this blank form filled in by someone in your office and mailed to the Federal Trade Commission the same day on which you receive it?

In the event that you have already mailed the other questionnaire since this letter left Washington, it will not be necessary to also return the duplicate blank attached. Your prompt attention to this request will be greatly appreciated by the commission.

A franked envelope, requiring no postage, is enclosed.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Exhibit "G6."

MARCH 3, 1920.

Report for Coke Industry.

GENTLEMEN :

The enclosed forms are for use in submitting your report for the coke industry, for the month of February. The report, in accordance with

the commission's letter of January 23, a copy of which is enclosed, should be submitted not later than March 25, 1920.

By direction of the commission.

J. P. YODER, *Secretary.*

Exhibit "G7."

Important notice to operators.

GENTLEMEN:

Enclosed herewith will be found a supply of cost, income and tonnage blanks for filing February, 1920, report. If an additional supply of these blanks is necessary for making February returns, it will be furnished immediately upon request.

An examination of a large number of the January reports shows that, on the whole, they have been very carefully and accurately prepared. The results are unquestionably of great value in showing the present conditions in the industry. There is, however, an apparent misunderstanding on the part of a few operators in some mining districts as to just how certain items in the reports are to be shown. The items in question are itemized below.

1. Power-house fuel. Neither the tonnage used at the power house nor the value of such tonnage is to be shown under the heading of "Supplies," nor should such value to be included on line 11 of the report with the cost of "Operating supplies." On the income side, the value of coal used at the power house should not be included on line 45, "Commercial sales," which figure should be identical with that on line 75, column D, page 4 of the report. On page 4, the tonnage or value of coal used at the power house should not be shown separately, nor should it be included with any other figure representing coal sales in any of the columns (A) to (G), inclusive.

The only space for showing both the tonnage and value of coal used at the power house is on line 92, page 5 of the report. Operators must not show these figures, nor include them, in any other place.

2. The certification sheet, which directly follows the cover of the report, must be signed by an officer of the company and returned with the report. All reports received without being properly signed will be returned for signature before the report is recorded as being received.

3. Operators are requested to see that all pages of the report (seven in all, including the cover page and certification page) are clipped together before mailing same to this office. If an operator does not produce any coal during any month, or does not operate his plant for any reason, he should indicate the necessary facts across the face of the report, sign same, and return all the blanks to this office.

Yours very truly,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Encl.

Exhibit "G8."

MARCH 10, 1920.

"Coal-accounting (bituminous)."

GENTLEMEN :

According to the commission's records no reply has been received from you in answer to its circular letters of January 16th and February 10th, enclosing a questionnaire to be filled in and promptly returned to this office. As neither of the letters were returned by the postal authorities, it is reasonably assumed that they were delivered.

The commission is very desirous of having its 1920 records of coal operators as complete and accurate as possible to prevent unnecessary delays in correspondence. In order that there will be no further loss of time in this matter, and assuming that the questionnaire previously mailed has been mislaid, another copy is attached hereto for your use. If you cannot furnish the 1919 tonnage by months, the total production for the year will be satisfactory, provided the period such tonnage covers is shown. Will you please have this blank form filled in by someone in your office and forwarded to the Federal Trade Commission by return mail.

If your company is no longer in the coal mining business, or if your mine has been temporarily closed down, please make such notation under No. 3 of the questionnaire and return it to this office so that your name may be removed from the mailing list.

In the event that you have already mailed the other questionnaire since this letter left Washington, it will not be necessary to also return the duplicate blank attached.

Your prompt attention to this request will be greatly appreciated by the commission.

A franked envelope, requiring no postage, is enclosed.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Encl.

Exhibit "G9."

1920 MAR 11—P. M. 5.53.

B137 W 41 GOVT

NR WASHINGTON DC 415P 11

WESTMORELAND CONNELLSVILLE COAL AND COKE CO.

FRICK BLDG PITTSBURGH PA

REFERRING TO THE COMMISSIONS LETTER JANUARY TWENTY-THIRD NINETEEN TWENTY COKE REPORT PLEASE MAIL REPORT IMMEDIATELY OR WIRE COLLECT WHEN IT WILL BE SENT

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

MARCH 11, 1920.

"Coal-accounting (bituminous)."

GENTLEMEN:

On February 8 and 9, 1920, at a conference held between officials and representatives of the National Coal Association and authorized representatives of the Federal Trade Commission, consideration was given to various suggested changes in the new monthly coal cost form on which reports are required by the commission. As a result of this conference, certain modifications have been made in the instructions previously sent you, copy of which is enclosed. Please note that in some instances they supersede as well as amplify the former instructions and should be attached to original instructions for future reference.

The report blanks for February, 1920, will be mailed you in a few days. In filling them out please follow the revised instructions.

Very truly yours,

FEDERAL TRADE COMMISSION,
J. P. YODER, *Secretary*.

Encl.

Exhibit "G11."

Supplemental instructions, accompanying letter of March 11, 1920.

The instructions given below supersede or amend those for similar items shown in the original set of instructions.

Line 5 and 13—Maintenance and repairs. Operators whose pay rolls, cost sheets or other records segregate these accounts from the general operating costs are required to show such expenditures for labor and supplies on lines 5 and 13, respectively. Operators who find it impossible or impracticable to segregate items under this account from their other costs of operation may include such charges for labor and supplies on lines 4 and 11, respectively.

The commission may from time to time also require operators to furnish an analysis of charges under this account or others, or have one of its agents examine an operator's books to ascertain charges applicable under any or all headings.

Power-house fuel. The commission does not allow the inclusion of a separate charge for power-house fuel in operating costs. Such a separate charge would be a duplication, since the cost of production of such coal is already included under the several headings of labor, supplies and certain fixed charges. The commission, however, does not wish to minimize the importance to operators of the necessity of keeping records showing the cost of the coal used at the power plant, as such figures would be of value in determining the economic advantages or disadvantages of producing power as compared with purchasing power for the operation of their plant. It is suggested and recommended that the value of the power-house fuel, based on

the cost of production, be shown each month in the blank space on line 92 after the title.

Line 18. "Supplies sold and miscellaneous revenue." Several questions arose during the conference as to just what should or should not be considered as proper credits to cost under the several subdivisions set out in the instructions, and a number of complex cases were cited. The following amplification of the text may clarify the intended meaning:

(a) Sales of explosives, etc.: When the cost of such supplies is charged into operating costs either direct or through an inventory adjustment the loss or gain from their sale should be shown as a debit or credit to cost. Supplies purchased through the Company store or commissary should not be included here, but should be treated as a profit or loss under Miscellaneous Income or Deductions from Income.

(b) Smithing: When carried as a separate account, the net revenue should be entered as a credit to cost. When a company credits this earning direct to an operating account the same result is obtained and is satisfactory to the Commission.

(d) Rents: Rents which are to be included herein are those amounts received from the miners for the use of tenements or dwellings built at or near the mining property for the accommodation of employees of the Company. No rents should be included from buildings, dwellings, or real estate that are not an integral part of the mining operation; such rents should be included as a part of "Miscellaneous Income."

Lines 47 and 52. "Purchased Coal Sales" and "Purchased Coal Cost" are included on the cost form as a part of "Total Sales and Transfers" and "Total Cost of Coal Sold." As used in the office tabulations, the costs and receipts of Purchased Coal are not combined with Produced Coal Costs and Receipts, but are treated as a Miscellaneous Income and Deduction.

Line 51. "Coal Inventory." To the value of the inventory at the close of the month should be added the value of coal in transit not invoiced, based on the cost of production.

In view of the fact that coal operators have been experiencing considerable difficulty as a result of coal being confiscated and diverted, it was deemed advisable to suggest a method of handling and reporting such tonnage on the Commission's cost forms. Such coal should be carried in inventory until invoiced. If the confiscated or diverted coal was shipped during 1919 but invoiced during the current year, the tonnage and value of such coal should be treated as inventory as at December 31, 1919.

Exhibit "G12."

MARCH 20, 1920.

Report for coke industry.

GENTLEMEN:

Under date of March 11th the commission wired your company as follows:

"Referring to commission's letter, January 23, 1920, Coke Report, please mail Report immediately or wire collect when it will be sent.

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

No reply has been received to this message and inasmuch as the commission wishes to close its January summaries promptly, it will be appreciated if the report is mailed at once if you have not already done so. Your cooperation in this matter will be appreciated.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Per DLW.

Exhibit "G13."

MARCH 27, 1920.

"Coal-accounting (bituminous)."

GENTLEMEN:

According to the Commission's records no reply has been received from you in answer to its circular letters of January 16th and February 10th, enclosing a questionnaire to be filled in and promptly returned to this office. As neither of the letters were returned by the postal authorities, it is reasonably assumed that they were delivered.

The Commission is very desirous of having its 1920 records of coal operators as complete and accurate as possible to prevent unnecessary delays in correspondence. In order that there will be no further loss of time in this matter, and assuming that the questionnaire previously mailed has been mislaid, another copy is attached hereto for your use. If you cannot furnish the 1919 tonnage by months, the total production for the year will be satisfactory, provided the period such tonnage covers is shown. Will you please have this blank form filled in by someone in your office and forwarded to the Federal Trade Commission by return mail.

If your company is no longer in the coal mining business, or if your mine has been temporarily closed down, please make such notation under No. 3 of the questionnaire and return it to this office so that your name may be removed from the mailing list.

In the event that you have already mailed the other questionnaire since this letter left Washington, it will not be necessary to also return the duplicate blank attached.

Your prompt attention to this request will be greatly appreciated by the Commission.

A franked envelope, requiring no postage, is enclosed.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

Encl.

Exhibit "G14."

APRIL 6, 1920.

Report for coke industry.

GENTLEMEN:

The enclosed forms are for use in submitting your report for the coke industry, for the month of March. The report, in accordance with the Commission's letter of January 23, should be submitted not later than April 25, 1920.

By direction of the Commission.

J. P. YODER, *Secretary.*

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Exhibit "G15."

APRIL 21, 1920.

"Coal-Accounting (Bituminous)."

GENTLEMEN:

Will you not favor the commission with at least an acknowledgment of its several letters by returning, filled out as completely as possible, one of the copies of the questionnaire enclosed therein? Without a reply of any kind in its records the commission is unable to understand your position in the matter, or know the reason for not returning the questionnaire.

The commission feels sure that upon reflection you will readily appreciate the uncertainty naturally existing where an operator fails to respond. This office, as a result of such action, does not know whether the operator is still in business, has sold or leased his property to another, or has abandoned or suspended operations, etc. By answering these simple facts and mailing the questionnaire you will relieve the commission of any misunderstanding in the matter and enable it to perfect its records. If your company feels that it can not furnish the detailed tonnage statement requested under Item 4 on the form, the total for the year will suffice.

The commission wishes to express its thanks for your previous co-operation and requests that you please have some one on your office staff make the necessary notations on the questionnaire and return it to this office at the earliest possible date. You are assured that your prompt reply will be greatly appreciated.

A franked envelope, requiring no postage, is enclosed herewith.

Very truly, yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,

Chief Economist,

Per DLW.

Enc.

Exhibit "G16."

APRIL 26, 1920.

GENTLEMEN:

The commission has received numerous inquiries recently as to whether, in view of the recent decision in the Maynard Coal Company case, it would continue to require monthly reports from coal-mining companies.

The commission believes that this information is useful and important to the general public, and also to the coal operators. It seems that a large number of the operators realize this situation. Therefore, the commission will continue to require these reports, except from the Maynard Coal Company, in the manner provided by the Federal Trade Commission act, until the appeal in the Maynard Coal Company case is decided by the United States Supreme Court.

The order recently made by the District of Columbia Supreme Court in respect to the Maynard Coal Company put that company under bond to pay the penalties provided for by law in the event the final decision should be in favor of the commission, and meantime the commission is restrained from proceeding against that company.

Very truly, yours,

FEDERAL TRADE COMMISSION,
J. P. YODER,
Secretary.

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Exhibit "G17."

APRIL 26, 1920.

"Coal-Accounting (Bituminous)."

GENTLEMEN:

Will you not favor the commission with at least an acknowledgment of its several letters by returning, filled out as completely as possible, one of the copies of the questionnaire enclosed therein? Without a reply of any kind in its records the commission is unable to understand your position in the matter, or know the reason for not returning the questionnaire.

The commission feels sure that upon reflection you will readily appreciate the uncertainty naturally existing where an operator fails to respond. This office, as a result of such action, does not know whether the operator is still in business, has sold or leased his property to another, or has abandoned or suspended operations, etc. By answering these simple facts and mailing the questionnaire you will relieve the commission of any misunderstanding in the matter and enable it to perfect its records. If your company feels that it can not furnish the detailed tonnage statement requested under Item 4 on the form, the total for the year will suffice.

The commission wishes to express its thanks for your previous cooperation and requests that you please have some one on your office staff make the necessary notations on the questionnaire and return it to this office at the earliest possible date. You are assured that your prompt reply will be greatly appreciated.

A franked envelope, requiring no postage, is enclosed for your use.

Very truly, yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist,
Per DLW.

Enc.

Exhibit "G18."

MAY 6, 1920.

Report for Coke Industry.

GENTLEMEN:

The commission has received numerous inquiries recently as to whether, in view of the recent decision in the Maynard Coal Company case, it would continue to require monthly reports from coke companies.

The commission believes that this information is useful and important to the general public, and also to the coke operators. It seems that a large number of the companies realize this situation. Therefore, the commission will continue to require these reports in the manner provided by the Federal Trade Commission act.

The order recently made by the District of Columbia Supreme Court in respect to the Maynard Coal Company put that company under bond to pay the penalties provided for by law in the event the final decision should be in favor of the commission, and meantime the commission is restrained only from proceeding against that company.

Your reports for the months of January, February, and March are past due and it is therefore requested that these reports be filed at once.

Very truly, yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER.*Chief Economist,*

Per DLW.

Enc.

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Exhibit "G19."

MAY 12, 1920.

Report for coke industry.

GENTLEMEN:

The enclosed forms are for use in submitting your coke industry report for the month of April, which should be submitted not later than May 31, 1920.

Your attention is directed to Schedule VIII (income statement), which, in accordance with the commission's letter of January 23d, should be completed for the quarter ended March 31, 1920.

By direction of the commission.

J. P. YODER,
*Secretary.**Exhibit "G20."*

MAY 22, 1920.

Important notice to operators.

GENTLEMEN:

Enclosed herewith will be found a supply of cost, income, and tonnage blanks for filing April, 1920, reports. If an additional supply of these blanks is necessary for making returns, it will be furnished immediately upon request.

The attention of operators is called to statement on page 1 of Bulletin No. 2, recently mailed you, relative to the study now being made by the commission of the capital investment necessary to operate mining properties in various districts. In this connection the commission requests the operators who have not as yet filed their balance sheet statements for the year ending December 31, 1919, or the latest fiscal year to do so at the earliest possible date. The commission has not urged the return of these statements prior to this time as it realized that a great many operators had not closed their books for 1919, but it is assumed that all such records are now closed and the statements can be furnished without difficulty. If the balance sheet forms already supplied have been mislaid, additional copies will be mailed upon request.

The commission fully appreciates the cooperation of the majority of operators in filing their monthly returns promptly, but requests that all operators endeavor to file such reports upon the date due in order that the figures for the bulletin may be the more promptly compiled. It is hoped that this bulletin can be published from ten days to two weeks earlier than it is at present, and this can only be accomplished by the full cooperation of the operators.

Very truly yours,

FEDERAL TRADE COMMISSION,
FRANCIS WALKER,
Chief Economist.

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Restraining order.

Filed June 12, 1920.

And now, June 12th, 1920, on motion of complainants, upon filing of the bill of complaint and of affidavits in support thereof, and it appearing to the court that immediate and irreparable injury, loss, and damage will result to the applicants before notice can be served and a hearing had on the application for a preliminary injunction in this, to wit: that if defendants continue the applications for writs of mandamus against said complainants as already begun a multiplicity of suits will follow, and said complainants be put to great cost and expense in defending each one thereof when the whole question and all the questions at issue could be decided as to all of said complainants in the one suit as proposed, and to give notice would enable the defendants, if they were so minded, to bring many of said proceedings before the hearing could be had on the application for relief of said bill of complaint. Now, therefore, it is ordered that a temporary restraining order be issued, returnable June 21st at 10 a. m., at Equity Division No. 2 of the Supreme Court of the District of Columbia, restraining and enjoining the said Federal Trade Commission, its members, agents, assistants, deputies, employees, and attorneys, from taking any steps or instituting any suits or causing the same to be instituted or any proceedings of any kind to compel compliance with said orders or to require answers to said questionnaires of said Federal Trade Commission set forth or referred to in said bill of complaint in the above-stated suit, provided, however, the complainants, or some of them, execute the usual undertaking

78 with sureties to pay such costs and damages, not to exceed five thousand dollars, as may be incurred or suffered by any party who may be found to have been illegally enjoined or restrained by this temporary restraining order.

JENNINGS BAILEY,
Justice.

Signed and issued June 12th, 1920, at 11.50 a. m.

79 Filed Dec. 2, 1921.

Come now the defendants, and file this.

Amended answer.

* * * * *
The joint and several answer of the Federal Trade Commission, Nelson B. Gaskill, Huston Thompson, and Victor Murdock, members of the Federal Trade Commission, defendants, to the bill of complaint in the Claire Furnace Company et al., plaintiffs above named:

These defendants now, and at all times hereinafter, saving to themselves, and each of them, all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as defendants are advised it is or are material or necessary for them to make answer unto, answering say:

1. As to the first paragraph of the bill, these defendants admit that the names and corporate character of the several plaintiffs are as stated therein.

2. As to the second paragraph of the bill, these defendants admit that each and every party named as complainant therein, and others similarly situated, except Republic Iron and Steel Company and Bethlehem Steel Company, is or would be equally interested in the subject matter of this suit and in seeking to obtain the relief prayed for; but these defendants deny that Republic Iron & Steel Company and Bethlehem Steel Company are proper parties complainant or are entitled to the relief sought, for the reason that at and before the filing of this bill said last-mentioned complainants were parties respondent in actions instituted in the United States District Court for the District of New Jersey and the Eastern District of Pennsylvania, respectively, in which all questions pertinent to the issue raised by this bill by and on behalf of these two complainants can be fully and adequately heard and determined.

3. As to the third paragraph of the bill, these defendants admit the allegations thereof, except that William B. Colver and John Garland Pollard are no longer members of the commission, but that the other persons named as defendants and John F. Nugent now constitute the Federal Trade Commission.

4. As to the fourth paragraph of the bill, these defendants admit that the Federal Trade Commission, on or about December 15, 1919, adopted a resolution, a copy of which is attached to the bill as Exhibit A; but defendants aver that the said resolution does not set forth their only source of authority for requiring the reports sought

to be enjoined, but that the authority under which these defendants have proceeded is hereinafter more fully set forth.

5. As to the fifth paragraph of the bill, these defendants admit that service upon complainants and others, on January 19th, 1920, 80 of the order to report the cost of steel production and the form for such report, referred to in the bill as Exhibits B and C; and that subsequently, on January 23rd, 1920, they likewise served the order and report form covering the coke industry, referred to in the bill as Exhibits B1 and E, under the authority of the statute referred to in their resolution, Exhibit A. All of these exhibits are true copies of the originals so served. And these defendants aver that said forms for reporting were prepared with only such detail as this commission and competent accountants consider necessary to produce the information which the commission is authorized by the statute to obtain, viz, as to the organization, business, conduct, practices, and management of those engaged in the steel industry.

6. As to the sixth paragraph of the bill, these defendants admit that they served further orders and demands on complainants, copies of which are attached to the complaint and marked, respectively, Exhibits F to F6 and G to G20.

7. As to the seventh paragraph of the bill, these defendants aver that the orders and notices referred to in paragraph 7 speak for themselves, and any allegations as to the implications to be drawn therefrom are allegations of law, not necessary to be answered.

8. As to the eighth paragraph of the bill, these defendants deny that the preliminary injunction issued in the case of Maynard Coal Company v. Federal Trade Commission by this honorable court, restrained defendants from performing its duties under the law, as to these complainants, and of pursuing, as to them and others not parties to said action, the activities, herein sought to be permanently enjoined. Defendants aver that the activities of defendants as to steel and coke are separate and different from their activities as to coal, and that the requirements as to steel and coke differ essentially from the requirements as to coal, and in support of this allegation defendants refer to the report forms and schedules attached to the Bill of Complaint relating to each of said commodities.

9. As to the ninth paragraph of the bill, these defendants deny the allegations thereof, that they claim authority to perform the acts complained of exclusively under paragraphs (a) and (b) of section 6 of the Federal Trade Commission act, and aver that they claim authority to perform said acts under paragraphs (a), (b), (f), and (g) of section 6 and under section 9 of said act, and under all the authority conferred upon the commission by Congress.

Defendants deny the allegations of said paragraph, that the Federal Trade Commission ordered answers to said questionnaires solely and only for the purpose of gathering and compiling said information and publication; they aver that the Federal Trade Commission required answers to said questionnaires for all the purposes and under all the authority granted to them by law, including the purpose of gathering and compiling said information for publication and the consequent regulation of the interstate commerce of said complainants resulting from such publication of the true trade facts as to all of the business of complainants and of others engaged in commerce

in those commodities, and including the purpose of making reports to Congress and of recommending additional legislation to Congress.

Defendants allege that all of the information to be acquired through the answers to said questionnaires is necessary and has direct relation to regulation and control of the interstate and foreign commerce of complainants and others answering said questionnaires, and is sought by the Federal Trade Commission for the purpose and in necessary aid of the regulation of said commerce.

Defendants admit that no complaint has been filed or is now pending before the commission against any of complainants for a violation of section 5 of the trade commission act, but aver that the activities sought to be enjoined were instituted and are sought to be carried on under the provisions of said trade commission act.

81 Except as herein admitted, the allegations of paragraph 9 are denied.

10. As to paragraph ten of the bill, these defendants admit that each of complainants is engaged in commerce and makes some sales in the state where its products are manufactured. Defendants aver on information and belief that the greater part, in both quantity and value, of purchases and sales made by each of complainants, is in interstate or foreign commerce. With the exception of the Claire Furnace Company, the Ella Furnace Company, and the Reliance Coke Company, defendants on information and belief aver that sixty-five per cent or more of the sales made by each of complainants is in interstate or foreign commerce, and that the greater portion of the principal raw materials of each concern is purchased and transported in interstate commerce to their converting plants. The exact percentage, quantity, and value of purchases and of sales made in interstate and foreign commerce by each of complainants is unknown to defendants, and defendants have no way of ascertaining the same, and, therefore, cannot and do not admit the allegations of paragraph ten with respect thereto, but if the same are material they call for strict proof thereof.

Defendants aver that each of complainants, with two or three exceptions, is engaged in interstate commerce in the purchase or production of raw materials and the assembly thereof at the place of processing them, and in contracting for the sale of the product and the transportation thereof in interstate commerce. And these defendants further aver that the interstate and intrastate commerce of each and every of the complainants is conducted as a single non-separable whole.

11. As to paragraph eleven of the bill, these defendants deny the allegations thereof and in refutation of the arguments therein advanced aver

(a) that the Congress of the United States has by necessary inference, the power to secure information concerning any subject matter as to which it has been given the power of legislation; that when one phase of a subject matter is within the jurisdiction of the Congress there arises by necessary inference the power of Congress to secure information as to the whole of the subject matter in order that any subsequent regulation of matters within the Federal jurisdiction may be properly adjusted to the public welfare; that the

Congress empowered these defendants as its agency, to collect information from the several corporations whose operations, considered collectively, constitute an industry, in order that Congress and the public may be informed as to the state of the industry as a whole, and that the Congress may consider what legislation, if any, is appropriate to that part of the industry which comes within its jurisdiction; that the power of Congress to obtain information is not limited to interstate commerce but may include intrastate commerce as well, when the two phases are a part of one subject; that the orders and report forms issued to complainants and others are intended to secure certain information as to the whole of the steel industry of the United States and coke and pig iron in connection therewith, which industry includes both interstate and intrastate commerce; and that in order to acquire accurate and complete information as to that portion of complainant's business which is interstate, and in order to enable the commission to perform its duties as to the interstate and foreign commerce of complainants and all others in such industry, including its regulatory duties as to such interstate commerce that are necessarily incident to and follow and flow from the dissemination of the complete trade facts as to these basic industries, it is necessary that defendants procure complete information of all the business of each of complainants, both that which is interstate and that which is intrastate, including production and costs, and, therefore, said orders and report forms are lawfully issued.

(b) That said orders and questionnaires do not in fact or in effect prescribe the form and manner in which complainants shall keep their books of account, and are not intended so to do. These defendants are advised by competent accountants that any industry having a reasonably accurate and comprehensive accounting system can, without change of its form or manner of book-keeping, supply the information called for by the said questionnaires. That as to the steel schedules and reports, they substantially and in fact require complainants to furnish information and make reports only in so far as their records and method of keeping same enable them so to do, and defendants specifically deny that said requirements prescribe a different system of keeping records than is now employed by complainants, and aver that such requirements do not in fact prescribe any form of keeping records and books.

(c) That the said questionnaires do not require the complainants to furnish information beyond the scope of the authority conferred by the commission act.

(d) That the requirement of a regular monthly report is within the intent and meaning of the authority to require annual or special reports, and that the provision for a monthly report in lieu of irregular special reports, is merely an adaptation of the power to require special reports, at such intervals as will supply the necessary information in a timely and convenient manner.

(e) That the provision of said orders and questionnaires for the inspection of the books and accounts of complainants is for the purpose of checking the reports submitted when necessary, in order that the commission may be assured that such reports are accurately and properly made, and in order that the provisions of the second section of paragraph 10 of the commission act, establishing penalties for

the submission of false statements, may be duly and properly enforced if and when necessary.

(f) That said orders and said questionnaires are justified and authorized by the provisions of the commission act, hereinbefore referred to.

(g) The purpose for which the Federal Trade Commission has issued said orders and questionnaires is that authorized by law, and said orders and questionnaires are calculated to effectuate the purpose declared by statute and any expression or additional statement made by the commission in Exhibit "A," in addition to the reference made therein and thereby to section 6, paragraphs (a) and (b) of the commission act can not detract from nor destroy the presumption that these defendants have issued said questionnaires in accordance with law and for the uses and purposes expressed therein.

(h) Said orders and said questionnaires and the action of these defendants in demanding answers thereto and compliance therewith, are not an unauthorized and unwarranted usurpation of power and an intrusion upon private affairs, private business, and the private rights of complainants, but are done and performed by virtue of a statute passed by the Congress of the United States and approved by the President thereof, the constitutionality whereof and the legality of the acts performed in pursuance thereof will be presumed until the contrary is established by a court of competent jurisdiction. That these defendants in publishing the information propose to comply with the provisions of the said statute and not disclose any trade secrets or the names of customers and not disclose the costs of any individual manufacturer and to make such publication only in such form and manner as will conceal, rather than disclose, the secrets of the business of any individual operator; and these defendants expressly deny that it will make publication of such information in such form or manner as to take away any property rights of complainants in their processes, organizations, and methods, and aver that the contrary is not to be presumed against them. Defendants aver the fact to be that, as to the steel industry, these complainants cause to be published in a trade publication of that industry, the Iron and Steel Institute, many of the facts called for, and that as to coal, the National Coal Association, a trade association of that industry, did gather and disseminate much more complete information than that called for by defendants, but defendants aver that such dissemination was made largely directly to competitors or supposed competitors in the same industry, and that only such portions were given to the public as might be deemed advisable to those self-interested in the industry.

83 (i) The announced purpose of these defendants to collect and make public the information sought to be obtained by said orders and questionnaires is in conformance with paragraph (f) of section 6 of said act.

(j) These defendants deny that the said orders and questionnaires will entail upon the complainants an enormous expense, as alleged in the bill of complaint, in order to make correct answers to said questionnaires, but aver that any corporation with a reasonably accurate and comprehensive accounting system can, without expense disproportionate to the industry, prepare the answers to said questionnaires, and that the forms of these questionnaires will not result

in an expense to the complainants disproportionate to the industry, and that if a reasonable expense should be thereby entailed, or some corporations not now keeping comprehensive and accurate accounting system should be led to install said system and thereby to entail expense, such result does not in itself or in contribution with other causes render either the act of Congress unconstitutional, nor the acts of these defendants under said act of Congress unlawful. That the forms prescribed by said questionnaires are carefully prepared by competent accountants in accordance with approved methods of accounting, and call only for such details as will enable the accountants of these defendants, by interior checking, to determine the accuracy of the results stated, and that the various subdivisions of said questionnaires are neither vague nor indefinite, but are perfectly capable of being understood by competent accountants.

12. As to the twelfth paragraph of the bill, these defendants deny that the interpretation placed upon the trade commission act by them in issuing said orders and questionnaires and demanding compliance therewith and answers thereto make the trade commission act unconstitutional and illegal and void, and aver—

(a and b) That the act of Congress and the issuance of the said orders and said questionnaires is not a regulation of property and business, but is the collection of information, the dissemination of which will result in a lawful and proper regulation of the interstate and foreign commerce of complainants and of others in said industries and businesses, and the report thereof to Congress may or may not result in further legislative regulation by Congress itself; that the power of the said Congress to obtain such information with relation to the whole of an industry is not confined to that part of such industry as may be determined to be in interstate commerce, but includes all phases thereof, irrespective of whether subsequent legislation could or could not cover the entire field of the inquiry. That it being by fair implication conceded by these complainants in paragraph 10 of said bill of complaint that at least a part of the business of each complainant includes the sale of its products in interstate commerce, it follows, therefore, that the Congress has power to obtain information with relation to the interstate business of these complainants, and it is likewise well established by judicial decisions that if the regulation by congressional authority of interstate commerce results in a discrimination between interstate and intrastate commerce that the power of the United States may be exerted upon intrastate commerce for the purpose of removing such discrimination; therefore, the power of the Congress to regulate intrastate matters for the protection of interstate commerce being established, it likewise follows that the Congress may, in order to obtain information relating to interstate business, likewise obtain information relating to the intrastate phase of any branch of that commerce, and the acts of these defendants in seeking such information as will cover the whole of the industry, whether interstate or intrastate, do not make the said act of Congress unconstitutional and void.

(c) The right of privacy claimed by complainants as to their books of account, papers, contracts, and transactions is subject to the right of the Congress of the United States in promotion of the general welfare, to secure information to be afforded by an examina-

tion of such books of account, papers, contracts, and transactions when necessary, for the reason that the said complainants are engaged in a business, which by reason of the nature thereof and its relation to the need of organized society is charged with a public interest, and is subject because of that interest as well as because of its appearance in part, at least, in interstate commerce to the right of the power of the Congress to obtain information with relation to the whole of the industry in which these complainants and others are engaged, that to the extent to which these defendants by authority of Congress now seek to exercise this right, there is no violation of the fourth amendment of the Constitution of the United States, protecting against unreasonable search and seizure. That each of complainants is a corporation organized and existing under the laws of a certain state, and that each of complainants, with a possible exception, has elected to engage in, and does continuously engage in, interstate commerce, and thereby has placed itself under the complete power of Congress and its agencies, including the Federal Trade Commission, as to such interstate commerce. That any corporation that engages in interstate commerce has no privilege of refusing to give information called for which, as hereinbefore averred, is necessary in the exercise of such complete regulatory power over interstate commerce. That under such circumstances the search and seizure clause of the fourth amendment to the Constitution has no application to corporations as to requirements made by defendants under a specific statute; and that, at all events, the fourth amendment only applies to criminal matters, and the activities sought to be enjoined are in no sense criminal proceedings.

(d) These defendants deny that compliance by complainants with said orders and answers to said questionnaires will subject them to unnecessary expense and loss in the preparation of said reports and in making provision therefor in their system of accounts, and will thereby deprive complainants of their property without due process of law and without just compensation, for the reasons, first, that compliance by the complainants with said orders and making answers to said questionnaires will not entail loss or expense out of proportion to the business, and, second, that if such loss or expense is incurred, it is within the power of the Congress of the United States to require of complainants the making of such expenditure, as is instanced by the authority granted by the Congress to the Interstate Commerce Commission to require railroads engaged in interstate commerce to keep their books of account in forms prescribed by that commission, and where necessary in order to obtain accurate results as to interstate commerce, to prescribe said forms and require reports in accordance therewith as to the intrastate operations of said companies, thereby entailing expense upon them.

13. As to paragraph thirteen of the bill, these defendants deny the allegations and conclusions stated therein and refer to paragraphs 11 and 12 of this answer.

14. As to paragraph fourteen, these defendants aver that they have the lawful authority to proceed and intend to resume the activities, herein sought to be enjoined, as soon as and whenever they are released and relieved from the restraining orders of this court.

Further answering, defendants state:

15. That by an act approved February 14, 1903 (32 Stat. 827), Congress created in the Department of Commerce and Labor the Bureau of Corporations, and granted to the commissioner of said bureau power and authority to make—

Diligent investigation into the organization, conduct, and management of the business of any corporation, joint-stock company, or corporate combination engaged in commerce among the several States and with foreign nations, excepting common carriers subject to "An Act to regulate commerce," approved February Fourth, eighteen hundred and eighty-seven, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct shall be made public.

85 And in order to accomplish the above purposes declared said Act provided that—

The said commissioner shall have and exercise the same power and authority in respect to corporations, joint-stock companies, and combinations subject to the provisions hereof as is conferred on the Interstate Commerce Commission in said "Act to regulate commerce" and the amendments thereto in respect to common carriers so far as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said "Act to regulate commerce" and by "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred ninety-three, supplemental to said "Act to regulate commerce," shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

And said Act also provided that—

It shall also be the province and duty of said bureau, under the direction of the Secretary of Commerce and Labor, to gather, compile, publish, and supply useful information concerning corporations doing business within the limits of the United States as shall engage in interstate commerce or in commerce between the United States and any foreign country, including corporations engaged in insurance, and to attend to such other duties as may be hereafter provided by law.

In pursuance to the powers and duties of said act, the Commissioner of Corporations during the period of the existence of said Bureau, from February 14, 1903, to September 26, 1914, carried on numerous and various investigations, in the course of which he gathered, compiled, and published complete information as to the activities of the concerns investigated, including not only their interstate but their intrastate business.

That in 1914 there was passed by the House of Representatives a bill creating an interstate trade commission, and granting to it similar powers of investigation then possessed by the Bureau of Corporations. That neither the Bureau of Corporations act nor the above referred to bill as passed by the House provided for any formal proceedings.

That as passed by the Senate, said bill, agreed to in conference and finally enacted into law as the Federal Trade Commission act, incorporated section 6 of the Federal Trade Commission act, greatly broadening and extending the powers then held by the Bureau of Corporations.

That by the Federal Trade Commission act it was also provided (section 3) that the Bureau of Corporations shall cease and "all pending investigations and proceedings of the Bureau of Corporations shall be continued by the Commission."

That from its inception to date Congress has appropriated moneys in lump sum to be used by the Federal Trade Commission in carrying out its powers and duties under said act, including those granted by said section 6. That during its existence and to date the commission has continued its activities similar to those carried on by the Bureau of Corporations above mentioned, suitably changed to meet the changing conditions in industry, and as directed, authorized, and empowered by Congress thereunder, in which investigations it has continuously used the money appropriated in lump sum by Congress for its use.

That at all times covered by this case the commission has had available moneys from said lump-sum appropriations and has expended them in its work of gathering, compiling, and disseminating

86 information as it was authorized and required to do by section 6 of said act. That until enjoined by this court in this proceeding and in the proceeding in this court in the case of the Maynard Coal Company v. Federal Trade Commission, it was continuing to perform its said duties under said act, employing therein the funds of the said lump-sum appropriations. That for some time after the granting of said injunctions it continued to perform such duties in so far as it could perform them without violating such injunctions, namely, by calling for voluntary reports from those engaged in the steel, coke, and coal industries; and it continued such activities until it appeared to the commission that by reason of said injunctions and suits pending the voluntary responses so fell off as to render the information compiled so fragmentary, partial, and incomplete as to make it of no accurate or substantial value either to the public, the industry, or Congress, and that said activities were also paid for out of the commission's lump-sum appropriations above mentioned.

That the commission, in the performance of its duties, as authorized and directed by Congress, as the commission believes its duties require, proposes to resume such activities as soon as and whenever it is released and relieved from the said restraining orders of this court; and that it has available, under its lump-sum appropriations, moneys to use, and which it proposes to use, in the pursuance of said activities and the performance of said duties.

16. That the commission under its act has full and complete power to gather, compile, and disseminate the information called for, and

which is sought to be enjoined in this case. That in the performance of its duties it is necessary for the commission to have the information called for, both as to interstate and intrastate transactions of complainants and of others in such industries, in order that the facts may be complete and accurate and not incomplete, partial, and inaccurate, and without value to the commission in the performance of regulatory powers, granted by Congress under its act, to the public, to the industries themselves, and to Congress.

That the power of Congress to grant such powers to the Federal Trade Commission as an administrative body has been fully upheld by the Supreme Court of the United States as to a power which more clearly involves purely intrastate activities of concerns which are engaged in interstate commerce than is granted by the Federal Trade Commission act and exercised by the commission and its predecessor, the Bureau of Corporations, under their acts, and which are now enjoined by this court.

17. That the requirements of the commission sought to be permanently enjoined in this case are not unreasonable or an abuse of discretion or unduly expensive (considering the size of the industries concerned), and that they are not in violation of any rights possessed by the complainant corporations, either in violation of the fourth, fifth, or tenth amendments to the Constitution; that as to such corporations engaged in interstate commerce, they are neither deprivation of property without due process, nor are they undue search or seizure, nor search and seizure of any kind. That they are not sought in a criminal proceeding or in aid of procuring evidence against such concerns in any criminal proceeding, and that they are not done in the absence of authority, but that they are done under specific provision of statute and power thereby granted. That said activities are all directed toward the gathering and compiling of information from corporations incorporated under State laws, whose only privileges of engagement in interstate commerce beyond the boundaries of the State in which incorporated are and must be subject to the general, full, and complete powers of Congress of regulation of interstate commerce and its other powers under the Constitution, either expressed or implied, including its powers to promote the general welfare and to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States or in any department or officer thereof.

87 18. That unless it can procure the information called for and required, the commission will be unable to properly perform its duties under its act, for the reason that all of said complainants while engaged substantially in interstate commerce, had also certain activities which are performed intrastate, but which intrastate activities are so interwoven with its interstate business and activities that it is impossible to separate same, and that even if they could be separated, such separation and subtraction of intrastate activities would render the result untrue and inaccurate and of little or no value in enabling the commission to perform its regulatory duties and its other duties under the act, as to the interstate business and activities of these complainants and of others in said industries.

That any requirement by the commission for the segregation of the business of these complainants and others in the industry as to what is interstate and what is intrastate would be both unduly burdensome and probably impossible of accurate fulfillment, and that such consideration, as well as the necessity for full and complete information of all the activities of these corporate complainants engaged in interstate commerce was carefully considered in preparing and making the requirements sought to be permanently enjoined.

19. Defendants deny that the requirements that said reports be furnished are in any sense a regulation of the business of any complainant, or prescribe the manner of keeping books by complainants, but aver that the requirements are only for reports and results, which are either copies of records and statements already kept and made by complainants for their own uses, some of which are habitually given publicity by them, and all of which are or should be ordinarily kept by concerns such as complainants under the ordinary standards of good accounting as commonly recognized; that in some instances a segregation and totaling as to certain items is necessary, and that as to substantially all of such information and reports, the facts are necessary in the proper conduct of the business of each concern for their operating and sales departments, for the information of the directors and stockholders, and for the financing operations.

That one purpose of the requirements made in this case is the gathering of complete information, which is necessary in the proper regulation through publicity of the true facts as to the interstate business of the industry. That such purpose can not be properly performed without the acquisition of the complete facts. That the acquisition of the complete information and facts required will effectuate such purpose, in that the dissemination of such complete trade information will tend to prevent undue fluctuations and panic markets based on ignorance of the true facts, or based on incomplete and partial or self-interested information, published only whenever and in so far as it may serve those self-interested who may publish it. That regulation by publicity is, and for a long time has been, recognized as one form of regulation which has been generally conceded to be fair and equitable to all concerned. That unless such regulation through public dissemination of the full and complete facts is carried out, other more drastic forms of attempted regulations without proper information may follow.

That in addition to the regulatory effect, in and of itself, of such public dissemination of the complete facts, it is one of the purposes of these activities to gather and convey to Congress, for its information in the performance of its duties, the full and complete facts, in order that instead of legislating on incomplete or partial or prejudiced information, it may have the full facts before it. That if any regulatory effect upon intrastate commerce flows from such publicity, it is merely incidental to the general regulation of interstate commerce, as to which the power of Congress is complete.

That said activities were not carried out under the provisions of section 5, and did not, therefore, require any complaint to be made or formal proceeding to be instituted. That said activities were, how-

ever, being carried out by direction of the commission in accordance with statute under other provisions of the Federal Trade Commission act.

88 20. Defendants show to the court, that the results of the information required by the commission is now and will be during the immediate future of particular value to the public generally, to Congress, and to the trade for the reason that, as is common knowledge, price readjustments are at the present time very much out of line and harmony, and prices on steel and steel commodities have declined from the war prices much less than on many other commodities, whereas prices of many other commodities, notably agricultural commodities, to the producer, have declined down to or below pre-war prices (for example, oats and corn are selling in agricultural districts at twenty cents and less per bushel), that as a result of the general feeling that the price readjustments in the steel and iron industry are out of line, the people generally have stopped buying, or are buying only as little as possible, and that this has an effect, whether properly or improperly, upon the whole industrial and trade structure, and that it is, therefore, of prime importance that the truth and facts relating thereto be ascertained and made public—not so as to identify results as to any individual concern (and it is not the purpose or intention of the commission to publish facts so as to identify results of individual concerns), but the truth and facts as to the entire industry; and to disseminate such true facts, it is essential and necessary that the commission gather and compile the facts called for in its forms (which activities were temporarily enjoined in this suit).

Further answering and as showing the public need for the gathering of such information and its dissemination, defendants aver that during the year 1920, after the defendants were restrained by order of this honorable court from continuing such gathering, compiling, and dissemination of information as to coal, there occurred throughout the United States an unprecedented panic market and period of profiteering in coal, due in part to ignorance of the true facts, which facts defendants by pursuing its activities then enjoined were gathering and would have gathered, compiled, and disseminated.

It is further averred that since 1917 a large number of new concerns have entered the coal and steel industries, and for that reason the facts sought to be gathered and their dissemination are of particular value, both to those in such industries and interested in such commodities, and to the investing public.

FEDERAL TRADE COMMISSION ET AL.,

Defendants,

By JESSE C. ADKINS,

WILLIAM T. CHANTLAND,

Their Attorneys.

DISTRICT OF COLUMBIA, ss:

I, Nelson B. Gaskill, on oath say that I am one of the defendants in the above-entitled cause, and that I have read the foregoing answer and know the contents thereof, and that I verily believe the facts stated in said answer to be true.

NELSON B. GASKILL

Subscribed and sworn to before me, a notatry public in and for the District of Columbia, by Nelson B. Gaskill, this the 1st day of December, 1921.

[SEAL.]

WARREN R. CHOATE,

Notary Public in and for the District of Columbia.

(My commission expires April 5, 1923.)

89 *Motion to strike out certain matters from the amended answer and motion to strike the entire amended answer from the files.*

Filed Dec. 14, 1921.

* * * * *

Come now the plaintiffs and move that there be stricken from the amended answer, for the sundry reasons herein set forth in connection therewith, certain matters appearing therein as follows:

1.

That portion of *paragraph 4* after the semicolon, as follows:

"but defendants aver that the said resolution does not set forth their only source of authority for requiring the reports sought to be enjoined, but that the authority under which these defendants have proceeded is hereinafter more fully set forth."

for that said matter is impertinent in that, not denying their resolution and the issuance of the questionnaires in the form alleged, but admitting the same and having in their answer earlier filed admitted the allegation of the fourth paragraph of plaintiffs' bill and thereby admitted that their activities were intended to be conducted

only under paragraphs (a) and (b) of section 6 of the Federal Trade Commission Act, the defendant cannot now be heard to plead to the contrary, and for the further reason that said matter is redundant.

2.

That portion of paragraph 5 being the last complete sentence thereof, as follows:

"And these defendants aver that said forms for reporting were prepared with only such detail as this commission and competent accountants consider necessary to produce the information which the commission is authorized by the statute to obtain, viz, as to the organization, business, conduct, practices, and management of those engaged in the steel industry."

for the reason that said matter is impertinent, redundant, argumentative, and pleads, if at all, only matters of conclusion and of evidence.

3.

That portion of paragraph 9 as follows:

"As to the ninth paragraph of the bill, these defendants deny the allegations thereof, that they claim authority to perform the acts

complained of exclusively under paragraphs (a) and (b) of section 6 of the Federal Trade Commission act, and aver that they claim authority to perform said acts under paragraphs (a), (b), (f), and (g) of section 6 and under section 9 of said act, and under all the authority conferred upon the commission by Congress.

"Defendants deny the allegations of said paragraph, that the Federal Trade Commission ordered answers to said questionnaires solely and only for the purpose of gathering and compiling said information and publication; they aver that the Federal Trade Commission required answers to said questionnaires for all the purposes and under all the authority granted to them by law, including the purpose of gathering and compiling said information for publication and the consequent regulation of the interstate commerce of said complainants resulting from such publication of the true trade facts as to all of the business of complainants and of others engaged in commerce in those commodities, and including the purpose of making reports to Congress and of recommending additional legislation to Congress.

91 "Defendants allege that all of the information to be acquired through the answers to said questionnaires is necessary and has direct relation to regulation and control of the interstate and foreign commerce of complainants and others answering said questionnaires and is sought by the Federal Trade Commission for the purpose and in necessary aid of the regulation of said commerce.

"* * * but aver that the activities sought to be enjoined were instituted and are sought to be carried on under the provisions of said trade commission act."

for the reason that having in their answer admitted the allegations of paragraph 9 of the bill of complaint that they were acting under the exclusive authority of paragraphs (a) and (b) of section 6 of the trade commission act, and having admitted their resolution and the issuance of the questionnaires, in which they stated that they were acting solely under said authority, defendants can not now be heard to plead to the contrary; and for the further reason that said matter is impertinent, redundant, and argumentative.

4.

That portion of paragraph 10 as follows: The words "purchases and," at the end of the fourth line; and the words "and that the greater portion of the principal raw materials of each concern is purchased and transported in interstate commerce to their converting plants," which words are found in the ninth, tenth, and eleventh lines; and also the words "of purchases and," found in the twelfth line thereof, for the reason that the same are impertinent; and also separately that portion of paragraph 10 as follows:

"Defendants aver that each of complainants, with two or three exceptions, is engaged in interstate commerce in the purchase or production of raw materials and the assembly thereof at the place of processing them and in contracting for the sale of the product and the transportation thereof in interstate commerce. And these defendants further aver that the interstate and intrastate com-

92 merce of each and every of the complainants is conducted as a single, nonseparable whole."

for the reason that it is impertinent, redundant, and not responsive to any averment in paragraph 10 of said bill of complaint, and as to the last three lines is so vague, indefinite, and uncertain as to tender no issue of fact or law.

5.

Strike out all of paragraph 11 after the words "deny the allegations thereof," being in the second line thereof, as follows:

"and in refutation of the arguments therein advanced aver"

and subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j), for the reasons that as stated said matter is argumentative, and also because it is impertinent and redundant.

Should the Court be of the opinion that the above motion as directed to paragraph 11 is too broad, then plaintiffs move to strike out separately portions of paragraph 11, as follows:

(1) All of subparagraph (a), for the reason that said matter is impertinent and argumentative.

(2) That portion of subparagraph (b) as follows:

"These defendants are advised by competent accountants that any industry having a reasonably accurate and comprehensive accounting system can, without change of its form or manner of bookkeeping, supply the information called for by the said questionnaires."

for the reason that the same is impertinent and a pleading of evidence.

(3) Also that portion of subparagraph (b) consisting of the last six lines, as follows:

"That as to the steel schedules and reports, they substantially and in fact require complainants to furnish information and make
93 reports only in so far as their records and method of keeping same enable them so to do, and defendants specifically deny that said requirements prescribe a different system of keeping records than is now employed by complainants, and aver that such requirements do not in fact prescribe any form of keeping records and books."

for the reason that the questionnaires attached to the bill of complaint on their face disclose that only as to a part of the items of information asked for were complainants relieved of furnishing the information in the event their methods of keeping their books and records did not enable them, without changing such methods, to furnish the same, and also because the same is an attempt to interpret documents, the interpretation of which is for the court, and as impertinent.

(4) Also subparagraphs (d), (e), and (f) for the reason that each is impertinent and argumentative.

(5) That portion of subparagraph (g) as follows:

"and any expression or additional statement made by the commission in Exhibit 'A,' in addition to the reference made therein and thereby to section 6, paragraphs (a) and (b) of the commission act

can not detract from nor destroy the presumption that these defendants have issued said questionnaires in accordance with law and for the uses and purposes expressed therein."

for the reason that said matter is impertinent, redundant, argumentative, and further objectionable for the reasons more particularly set forth in paragraph 1 and in paragraph 3 of this motion.

(6) That portion of subparagraph (b), being the latter part of the first full sentence, as follows:

"but are done and performed by virtue of a statute passed by the Congress of the United States and approved by the President thereof, the constitutionality whereof and the legality of the acts performed in pursuance thereof will be presumed until the contrary is established by a court of competent jurisdiction."

for the reason that said matter is impertinent, redundant, argumentative, and pleads, if at all, matters of presumption and 94 of which, if material, judicial notice is taken.

(7) That portion of subparagraph (h), being the last portion thereof, as follows:

"and aver that the contrary is not to be presumed against them. Defendants aver the fact to be that, as to the steel industry, these complainants cause to be published in a trade publication of that industry, the Iron and Steel Institute, many of the facts called for, and that as to coal, the National Coal Association, a trade association of that industry, did gather and disseminate much more complete information than that called for by defendants, but defendants aver that such dissemination was made largely directly to competitors or supposed competitors in the same industry, and that only such portions were given to the public as might be deemed advisable to those self-interested in the industry."

for the reason that said matter is redundant, impertinent, argumentative, and evidential.

(8) Subparagraph (i) as impertinent and redundant for the reason set forth in paragraphs 1 and 3 of this motion with respect to the admission made by the defendants in their answer as to the authority under which and the purpose for which the questionnaires were issued and regarding its resolution and the issuance of said questionnaires.

6.

All of subparagraph (a and b), subparagraph (c), and subparagraph (d) of paragraph 12 as redundant, impertinent, and argumentative.

7.

That part of paragraph 13, being the words "and refer to paragraphs 11 and 12 of this answer," as redundant.

8.

All of paragraph 15 as impertinent, redundant, argumentative, and, if material or pertinent, matters of which judicial notice is taken.

9.

95 All that portion of paragraph 16, save the first sentence thereof, said portion being as follows:

"That in the performance of its duties it is necessary for the commission to have the information called for both as to interstate and intrastate transactions of complainants and of others in such industries in order that the facts may be complete and accurate and not incomplete, partial, and inaccurate, and without value to the commission in the performance of regulatory powers granted by Congress under its act to the public, to the industries themselves, and to Congress.

"That the power of Congress to grant such powers to the Federal Trade Commission as an administrative body has been fully upheld by the Supreme Court of the United States as to power which more clearly involves purely intrastate activities of concerns which are engaged in interstate commerce than is granted by the Federal Trade Commission act and exercised by the commission and its predecessor, the Bureau of Corporations, under their acts and which are now enjoined by this court."

as impertinent, argumentative, and redundant.

10.

That portion of paragraph 17, being the last sentence thereof, as follows:

"That said activities are all directed toward the gathering and compiling of information from corporations incorporated under state laws, whose only privileges of engagement in interstate commerce beyond the boundaries of the state in which incorporated are and must be subject to the general, full, and complete powers of Congress of regulation of interstate commerce and its other powers under the Constitution, either expressed or implied, including its powers to promote the general welfare and to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States or in any department or officer thereof."

as impertinent, redundant, and argumentative.

11.

All that portion of paragraph 18 to the words reading "and that such consideration," etc., in the fourth line from the end, as so indefinite, vague, and uncertain as to tender no issue of fact or law, and the entire paragraph as impertinent and argumentative.

96

12.

All of paragraph 19 as redundant, impertinent, and argumentative.

13.

All of paragraph 20 as impertinent, redundant, and argumentative.

14.

Plaintiffs further move to strike said entire amended answer from the files for the reason that the defendants therein set forth many alleged presumptions of law and also matters of which, if material, judicial notice is taken; that it lacks sufficient, specific, and separate admissions or denials of the material allegations of the bill or specific and separate material averments of new matter; that the same so confuses statement and substance with impertinent, redundant, and argumentative matter as to violate the rules of pleading; and therefore said amended answer in the above respects violates rule 9 of the equity rules of this court.

And for the further reason that said amended answer tenders issues that were not raised by the bill of complaint; that are confusing, feigned, and false both in fact and in law; and said amended answer sets forth no defense to said bill of complaint.

LEVI COOKE,

A. LEO WEIL,

*Attorneys for Plaintiffs other than Midvale Steel
and Ordnance Co. and Cambria Steel Co.*

WM. WALLACE, Jr., and

CHADBOURNE, BABBITT & WALLACE,

*Attorneys for Midvale Steel & Ordnance Company
and Cambria Steel Company.*

97 DISTRICT OF COLUMBIA,

City of Washington, ss:

A. Leo Weil, having been duly sworn according to law, deposes and says that he is one of the attorneys of record for said complainants and makes this affidavit in the place and stead of one of said complainants because none of them are present in the city of Washington at this time, that the foregoing motion has not been interposed for delay or other cause except that deponent and other attorneys of record are of the opinion and believe that the same is true in fact and good in law, and in the interest of the administration of justice ought to be submitted to the judgment of this court and further deponent sayeth not.

A. LEO WEIL,

Sworn to and subscribed before me this 13th day of December, 1921.

[NOTARY SEAL.]

JENNIE M. SHEFFER, *Notary Public.*

To: Mr. JESSE C. ADKINS and Mr. WILLIAM T. CHANTLAND, *Attorneys
for Defendants.*

Please take notice that we shall call the foregoing motion to the
attention of Mr. Justice Bailey, holding equity court, on

98 Wednesday, December 14th, 1921, at the opening of court or as
soon thereafter as counsel can be heard.

LEVI COOKE,

A. LEO WEIL,

Attorneys for Plaintiffs other than appearances below.

WM. WALLACE, Jr., and CHADBOURNE,

BABBITT & WALLACE,

*Attorneys for Midvale Steel & Ordnance Company,
and Cambria Steel Company.*

Service of a copy of the foregoing motion is acknowledged this 13th day of December, 1921.

JESSE C. ADKINS,

WM. T. CHANTLAND,

Attorneys for Defendants.

99

Memorandum of Court.

Filed Feb. 8, 1922.

1. As to plaintiffs' motion to strike out certain parts of the amended answer:

While the amended answer is in part argumentative and at times pleads conclusions of law rather than facts, yet in order to present the defense as a whole these averments are not necessarily impertinent. As to the averments which plaintiffs claim are contradictory to the original answer, it may be said that the matters involved in this suit are of wide public interest and the defendant Commission is charged with a public duty, and the matters in controversy should be fully settled as soon as possible and without further litigation.

For these reasons this motion will be overruled, without prejudice to the right of the plaintiff on the further hearing on the second motion to raise objections to matters not properly pleaded.

2. As to the motion to strike the entire answer:

Under the rules and practice in equity prior to the present rules there is no question but that no demurrer to an answer would lie, nor was there any way of testing the sufficiency of an answer as a defense but by setting down the case for hearing on bill and answer.

An answer was evidence as well as a pleading and on hearing
100 on bill and answer, the answer being evidence, the hearing was final. Even where the bill waived an answer under oath, and an unverified answer was filed, the same rule was followed where the hearing was on bill and answer. This was expressly provided for in the rules of the United States Supreme Court (Equity Rule 41).

"If the complainant in his bill shall waive an answer under oath, ——— the answer of the defendant, though under oath ——— shall not be evidence in his favor unless the cause be set for hearing on bill and answer only ———."

This provision of the former rules was not carried into the present rules. An answer, although verified (excluding answers to interrogatories), is no longer evidence. While the sufficiency of a plea (which was never evidence) could be tested by setting it down for argument, under the new rules the matter of a plea must be incorporated in the answer and the plea becomes a part of the answer.

In my opinion, by analogy to the former practice in regard to pleas, the sufficiency of the matters of both pleas and answers as defenses may be tested by proceedings in the nature of setting down the same for argument or by a motion to strike, the latter being more in accordance with the present methods of testing the sufficiency of bills and cross claims. In *Shera v. Merchants Life Ins. Co.*, 237 Fed. 484, the same view of the present practice is taken.

Counsel for defendant at the last hearing stated that they were not prepared to argue the case if the motion filed by plaintiffs were treated as a demurrer to the answer. Therefore a day will be set for argument upon the motion. Inasmuch as many of the questions

involved were fully argued before me in the case of Maynard Coal Co. v. Federal Trade Commission, the argument will be limited to points which counsel may contend differentiate the present case from that one; and in this connection I call counsels' attention to the case of Crescent Cotton Co. v. Mississippi, decided by the Supreme Court on October 17, 1921.

JENNINGS BAILEY, *Justice*.

102 *Order making John F. Nugent party defendant.*

Filed March 1, 1922.

* * * * *

The court being informed that William B. Colver and John Garland Pollard, defendants herein, are no longer members of the Federal Trade Commission, and the court being informed by counsel for both parties that John F. Nugent has become a member of said Federal Trade Commission, and attorneys for plaintiffs having moved that said John F. Nugent be made a party defendant, it is this 1 day of March, 1922, ordered that said John F. Nugent be made a party defendant.

JENNINGS BAILEY, *Justice*.

Answer of John F. Nugent, commissioner.

Filed March 1, 1922.

* * * * *

Comes now John F. Nugent, who having heretofore by order of court been made a defendant in the above cause as a member of the Federal Trade Commission, and hereby adopts the amended answer heretofore filed by the Federal Trade Commission and the other present members of the Federal Trade Commission as his answer, and joins therein as such member for all the purposes of said cause.

JOHN F. NUGENT.

103

Stipulation.

Filed March 1, 1922.

* * * * *

The following stipulation is signed so as to make matter of record what was orally agreed to by the attorney for the defendants and the attorney for Midvale Steel and Ordnance Company and Cambria Steel Company during the oral argument:

First. Defendants agree that for all the purposes of this case the condition in Schedule 7 of the questionnaire, reading, "if you have made any estimate or actual allocation" would relieve any addressee

of the need for furnishing any of the information called for by that schedule, provided it was not already assembled.

Second. The Midvale Steel and Ordnance Company and the Cambria Steel Company agree for all the purposes of this action that the expense involved to them of furnishing the information called for by the reports, schedules, and questionnaires complained of (with the above qualification as to Schedule 7) would not be either unconscionable extraordinary or unusual and that such expense shall not be made in this action the basis of a claim that the fifth amendment has been violated. Other grounds for alleged violation of the fifth amendment are reserved.

Other than as above any question of the power of the commission to require and receive this information shall not be affected by this stipulation.

Dated February 18, 1922.

WILLIAM WALLACE, JR.,
*Attorney for Plaintiffs, Midvale Steel &
 Ordnance Co. and Cambria Steel Company,*
 JESSE C. ADKINS,
 WM. T. CHANTLAND,
Attorneys for Defendants.

104

Stipulation.

Filed March 1, 1922.

* * * * *

It is agreed and stipulated by the attorneys for the plaintiffs, except Midvale Steel and Ordnance Company and Cambria Steel Company, with the attorneys for the defendants, that the reports and questionnaires involved in said complaint and under consideration in the form submitted by said Federal Trade Commission to plaintiffs do not present the difficulties as to the question of outlay and expense charged in the 11th paragraph of the bill of complaint under subparagraph (j), and in the 12th paragraph of said complaint, under subparagraph (d), and that under the form of said reports and questionnaires it will not be contended by plaintiffs that they entail upon the plaintiffs any extraordinary or unreasonable outlay or expense in filing the answers thereto if the said Federal Trade Commission be entitled to demand such answer.

A. LEO WEIL,
 LEVI COOKE,
Attorneys for Plaintiffs,
 JESSE C. ADKINS,
 WM. T. CHANTLAND,
Attorneys for Defendants.

MARCH 1, 1922.

105

Final decree.

Filed March 10, 1922.

The above-entitled cause having come on to be heard upon plaintiffs' motion to strike out certain parts of the amended answer and to strike

the entire amended answer from the files, and it appearing to the court, from the papers and from the oral argument, that the amended answer of the defendants, the Federal Trade Commission, and Nelson B. Gaskill, Huston Thompson, and Victor Murdock as commissioners, was intended to and did replace the original answer of all of the original defendants in said suit, and John F. Nugent, commissioner, heretofore made a party defendant herein, having answered and adopted said amended answer as his answer in this suit:

And said motions of said plaintiffs having been fully argued and submitted by counsel for plaintiffs and defendants, and the court having considered said motions and having heretofore rendered its opinion in which it reserved decision upon the motion to strike the entire amended answer from the files, in order to permit counsel, if they should so desire, to present further arguments, and the court having been advised that no such further argument is desired,

It is now, this 10 day of March, 1922, by the court ordered:

106 First. That the motion to strike out certain parts of the amended answer be overruled without prejudice to the right of the plaintiffs on any further hearings in said suit to raise objections to matters not properly pleaded.

Second. That the second motion to strike the entire amended answer from the files be, and the same is hereby denied, except as to the ground that the said amended answer set forth no defense to the bill of complaint.

Third. And it is further adjudged, ordered, and decreed that the said amended answer does not state a defense to said bill of complaint; and the court, having asked defendants' counsel whether they could further amend in substance their amended answer and counsel for defendants having stated that said amended answer stated their full defense, and it therefore appearing to the court that said amended answer was not further amendable in substance.

Fourth. It is now, therefore, further adjudged, ordered, and decreed that the said motion to strike the said amended answer be, and the same is hereby granted on the ground that the said amended answer does not state a defense; to which ruling, order, and decree set forth in this and the preceding paragraph, the defendants note an exception on the ground that the rules and practice of this court do not provide for striking out the entire amended answer for insufficiency and on the ground that said amended answer states a sufficient defense to the bill of complaint, which exception is hereby allowed.

Fifth. And defendants, having elected to stand upon their said amended answer and not to answer further, and having excepted to the rulings, order, and decree of the court that said amended answer does not state a defense and granting the motion to strike out the same for that reason; and the defendants having moved to
107 vacate the said ruling, order, and decree holding that the amended answer does not state a defense and granting the motion to strike out the same, and having moved to proceed to the taking of testimony and the hearing of this case upon the issues raised by the bill of complaint and said amended answer.

It is further adjudged, ordered, and decreed that the said motions be, and they are hereby denied, to which ruling, order, and decree the defendants note an exception, which is hereby denied.

And, upon motion of the plaintiffs, the court now, therefore, proceeds to make and enter a final decree herein, and adjudges, orders, and decrees as follows:

1st. That the temporary injunction heretofore granted be made final.

2nd. It appearing from the bill of complaint herein that on or about December 15, 1919, the defendant commission adopted a resolution whereby it resolved to collect and publish from time to time current information with respect to the production, ownership, manufacture, storage, figures of cost and wholesale and retail prices of products and by-products of various basic industries, including coal and steel, and with respect to the coal industry and the steel industry, including in the latter closely related industries such as the iron ore, coke, and pig iron industries;

And it further appearing from said Bill of Complaint that thereafter the commission, by written orders, directed the plaintiffs herein to make to the commission monthly reports of their monthly costs of production for the several products of the plaintiffs designated in, and other data specified in, forms of reports or questionnaires (or schedules, so called) which accompanied said orders,

108 including detailed information regarding the quantity production by the several complainants of the products produced by them, respectively, the sales and contract prices thereof, the orders booked by them, respectively, the sales and contract prices thereof, the orders booked by them, the amounts allocated by them to depreciation and administrative and selling expenses, and also to file with the commission quarterly income statements and balance sheets;

And it further appearing from said bill of complaint that the plaintiffs having failed to make said reports the commission by other written orders threatened the imposition of penalties for delay or failure in respect thereof;

And it further appearing that the commission and the other defendants herein filed an amended answer herein, in which they, among other things, admitted the adoption by the commission of said resolution and the issue by it of said orders, and asserted that the commission is authorized by the Federal Trade Commission act, approved September 26, 1914, and otherwise by law, to require the plaintiffs to make said reports and to furnish said information to the commission;

Wherefore defendants, Nelson B. Gaskill, Huston Thompson, Victor Murdock, John F. Nugent, and Federal Trade Commission and all its members, agents, assistants, deputies, employees, attorneys, and all persons acting by, through, or under said defendants, or any of them, are hereby enjoined and restrained from enforcing or attempting to enforce in any manner against any of the plaintiffs herein, or against any person acting or claiming to act for any of them, said resolution and orders in so far as they require or purport to require the complainants herein to make said reports as aforesaid, and from requiring that answers be made by or on behalf of any of the plaintiffs herein to said reports or questionnaires, and from requiring any
 109 of them otherwise to furnish to the defendants, or any of them, the costs of production for its products, its by-products, or of any thereof or the other information aforesaid, or any thereof, including income statements and balance sheets, and from

demanding or taking any steps to demand from any of the plaintiffs herein, or to secure, the furnishing to the defendants, or any of them, of any data whatsoever with respect to the manufacture, production, ownership, or storage of any of its products or by-products, or any thereof, or with respect to the cost or sale prices thereof, for the reason that the defendant Federal Trade Commission could not constitutionally be authorized and has not been authorized by law to require or to demand said reports and answers or to demand that it be furnished with said information and data.

3rd. That the plaintiffs have and recover of said defendants the plaintiffs' costs of said suit.

4th. To this decree and to each part thereof, except that contained in paragraphs first and second, which overrules and denies certain parts of plaintiffs' motion, the defendants note an exception, which is hereby allowed.

JENNINGS BAILEY, *Justice*.

From the foregoing decree, except paragraphs first and second thereof, the defendants in open court note an appeal to the Court of Appeals of the District of Columbia, which is hereby allowed, and the bond for costs on appeal is hereby fixed at one hundred dollars, or the amount of cash which may be deposited in lieu of such bond is fixed at fifty dollars.

JENNINGS BAILEY, *Justice*.

1922, Mar. 17, \$50, deposited by Deft. No. 1 in lieu of bond on appeal.

WTC/CSV 3-1-22.

110

Memorandum opinion of court.

Filed March 18, 1922.

* * * * *

In the memorandum filed February 8, 1922, I referred to the decision in the case of Maynard Coal Co. v. Federal Trade Commission, reported in 48 Washington Law Reporter, 278, and I adopt that opinion as my opinion in this case, so far as applicable.

BAILEY, J.

111

Opinion of court.

Filed Apr. 19, 1920.

* * * * *

This is an application for an injunction to restrain the Federal Trade Commission from taking steps to collect a penalty for failure on the part of the plaintiff, the Maynard Coal Company, to make certain reports called for by the commission. The bill is supported by several affidavits of expert accountants. The defendant commission has filed its answer, but on account of insufficient verification it can not be treated as an affidavit. It has also filed with its answer several affidavits, which will be noticed hereafter.

The plaintiff is a corporation engaged in the mining, production, and sale of bituminous coal. It owns and operates mines in Ken-

tucky and Ohio. Practically all of the coal mined in Kentucky and about one-half of the coal mined in Ohio is shipped to points within those states and the remainder of that mined in Ohio to points in that state. On January 31, 1920, the defendant commission served upon a large number of coal mining corporations, including the plaintiff, an order requiring them to report "monthly costs of production and other data," as set out in specifications accompanying the order, for each calendar month of the year 1920 and until further notice. The information and reports required are very full and detailed as to production, sales, management, financial condition, depreciation, etc., and all to be calculated as prescribed in the specifications. The plaintiff claims, and from the affidavits filed such appears to be the fact, these reports cannot be made without a large change in the plaintiff's method of bookkeeping and accounting and at a very considerable expense.

The commission claims that it may require these reports, under the authority placed in it by the act of Congress creating the commission, approved September 26, 1914, and that Congress has the authority to so empower the defendant under the clause known as the Commerce Clause of the Constitution of the United States.

"Congress shall have power * * * to regulate commerce with foreign nations and among the several states and with the Indian Tribes."

The parts of the Federal Trade Commission act pertinent to this inquiry are substantially as follows:

Commerce is defined, section 4, as "commerce among the several states or with foreign nations, or in any Territory of the United States or with foreign nations, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

Section 5 provides that unfair methods of competition in commerce shall be unlawful, and empowers the commission to take steps to prevent such unfair methods and prescribes the procedure for carrying out such purpose.

112 Section 6 of the act provides: "That the commission shall have power—

(a.) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relations to other corporations and to individuals, associations, and partnerships.

(b.) To require, by general or special orders, corporations engaged in commerce, excepting banks and common carriers, subject to the act to regulate commerce, or any class of them or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and in-

dividuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable time as the commission may prescribe unless additional time be granted in any case by the commission."

Subsection *c* authorizes the commission, when a final decree has been entered against a corporation under the antitrust acts, to investigate the manner in which the decree is being carried out.

Subsection *d* authorizes the commission, upon direction of the President or either House of Congress, to investigate alleged violations of the antitrust acts.

f. "To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best for public information and use."

g. "From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this act."

h. "To investigate from time to time trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable."

The defendant in its answer admits "that no complaint has been filed by or before it charging the plaintiff with unfair methods of competition or with the violation of the Federal Trade Commission act or the antitrust acts and admits that the information sought to be secured from the plaintiff may not throw any light or have any bearing upon any possible violation of any of the acts aforesaid, but asserts that such information is sought for a lawful purpose within the scope of the powers conferred upon the defendant by section 6 of the said commission act.

113 The authority of Congress to enact this legislation is claimed under the power to regulate commerce above set out. The reports demanded of the plaintiff are not limited to questions connected with the shipment of coal in interstate commerce or the contracts in reference to, or the prices of coal so shipped, but relate almost entirely to the mining of coal and the price at which it is sold, and the financial condition and operations of the company, and all without any attempt to limit the inquiry to matters pertaining to the coal shipped in interstate commerce. In fact the commission in its answer "denies that the plaintiff has the right to segregate its business and to say that part of its business is interstate and part is intrastate, but in order to ascertain if defendant is engaged in commerce, the courts will look to the entire business transactions of the plaintiff, and if any part of its business is intrastate and a part interstate and the whole business is conducted under one organization as is set forth and admitted in the plaintiff's bill, then

the defendant insists that the plaintiff, considering its business as a whole, (is engaged in) interstate commerce and the defendant has the right to ask the information sought.

And the information sought in this case is such as would apply as well to a corporation whose business was wholly intrastate as to the plaintiff. The defendant unquestionably is demanding information as to intrastate commerce and as to coal production, and frankly asserts the right to do so.

That there is a radical distinction between production and commerce is clear.

In *Kidd vs. Pearson* (128 U. S. 1) Mr. Justice Lamar said, page 20:

"Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in *County of Mobile vs. Kimball*, 102 U. S. 691, 702, is as follows: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as purchase, sale, and exchange of commodities." If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest and the cotton planter of the South plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are, and must be, local in all the details of their successful management."

111 In *United States vs. Knight*, 156 U. S. 1, page 12, Mr. Chief Justice Fuller said:

"Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it."

In *Addyston Pipe & Steel Co. vs. United States*, 175 U. S. 211, which involves the Anti-Trust Act of July 2, 1890, Mr. Justice Peckham, after holding that Congress, under the power to regulate interstate commerce, could regulate any agreement or combination that operated

upon the sale, transportation, and delivery of an article of interstate commerce, on page 27, said:

"Although the jurisdictions of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the State. The combination herein described covers both commerce which is wholly within a State and also that which is interstate.

In regard to such of these defendants as might reside and carry on business in the same State where the pipe provided for in any particular contract was to be delivered, the sale, transportation, and delivery of the pipe by them under that contract would be a transaction wholly within the State, and the statute would not be applicable to them in that case. They might make any combination they chose with reference to the proposed contract, although it should happen that some nonresident of the State eventually obtained it."

In *Delaware, Lackawanna & Western Railroad Co. vs. Yurkonis*, 238 U. S., 439, a case involving the Federal employers' liability act, Mr. Justice Day, page 444, said:

"The averments of the complaint as to the manner of the receiving of the injury by plaintiff showed conclusively that it did not occur in interstate commerce. The mere fact that the coal might be, or was intended to be, used in the conduct of interstate commerce after the same was mined and transported did not make the injury one received by the plaintiff while he was engaged in interstate commerce. The injury happening when the plaintiff was preparing to mine the coal was not an injury happening in interstate commerce, and the defendant was not then carrying on interstate commerce facts essential to recovery under the employers' liability act."

In *Coe vs. Erroll*, 116 U. S., 517, it was held that logs cut in New Hampshire and hauled to Erroll, N. H., to be transported to Maine, were not in interstate commerce. Mr. Justice Bradley, page 525, said:

115 "When the products of the farm or forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin but as a part of the general mass of property of that State, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for transportation, but taxed without

any discrimination, in the usual way and manner in which such property is taxed in the State."

On page 528, he said:

"It is true, it was said in the case of the *Daniel Ball*, 10 Wall, 557, 565: 'Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced, but this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. The carrying of them in carts or other vehicles, or even floating them to the depot where the journey is to commence, is no part of the journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State, its destination is not fixed and certain. It may be sold or otherwise disposed of within the State, and never put in course of transportation out of the State. Carrying from the farm or forest to the depot is only an interior movement of the property, entirely within the State, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the State it is matter altogether in fieri, and not at all a fixed and certain thing.'"

In order for the Federal Trade Commission to have the power to inquire the plaintiff to make reports as to the mining of coal and as to its intrastate shipments, it must appear that this information is necessary to or connected with some object over which the general Government has power. There is no claim made that there is any proceeding pending, involving the antitrust act, or unfair methods of competition, or under the Clayton Act, but in its order defendant demands reports in all the business of the plaintiff.

The defendant relies upon the visitorial powers of Congress over corporations. In this connection it must be borne in mind that the power of Congress over an instrumentality of commerce, such as a common carrier, is far different from its powers over an ordinary business corporation which merely ships its products or a portion of its products over such carrier. In fact, as said by Mr. Justice Holmes in *Smith vs. Interstate Commerce Commission*, 245 U. S. 33, on page 45, "It is not far from true—it may be it is entirely true, as said by the commission (referring to the Interstate Commerce Commission)—that there can be nothing private or confidential in the activities and expenditures of a carrier engaged in interstate commerce."

Apart from the fact that plaintiff is a corporation, it is clear that Congress could not compel the production of the private books and papers of a citizen, except in the progress of judicial proceedings.

Kilbourne vs. Thompson, 103 U. S., 168.

Harriman vs. Interstate Commerce Commission U. S., 211 U. S., 407.

116 Mr. Justice Field, then sitting on the Circuit Court, in the case of *In re Pacific Railway Commission*, 32 Federal Reporter, 241, said (page 250):

"And in addition to the inquiries usually accompanying the taking of a census, there is no doubt that Congress may authorize

a commission to obtain information upon any subject which, in its judgment, it may be important to possess. It may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business, and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters. In the pursuit of knowledge it can not compel the production of the private books and papers of the citizens for its inspection, except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence these books and papers contain." (And again on page 254:)

"But in accordance with the principles declared in the case of *Kilbourne vs. Thompson*, and the equally important doctrines announced in *Boyd vs. U. S.*, the commission is limited in its inquiries as to the interest of these directors, officers, and employees in any other business, company, or corporation to such matters as these persons may choose to disclose. They can not be compelled to open their books, and expose such other business to the inspection and examination of the commission. They were not prohibited from engaging in any other lawful business because of their interest in and connection with the Central Pacific Railway Company, and that other business might as well be the construction and management of other railroads as the planting of vines, or the raising of fruit, in which some of these directors and officers and employees have been in fact engaged. And they are entitled to the same protection and exemption from inquisitorial investigation into such business as any other citizens engaged in like business."

But the commission claims that, inasmuch as the plaintiff is a corporation, it has the authority claimed under the visitorial power of Congress. That the power sought is visitorial in its nature is clear, for in order to give the information and make the reports required it will be necessary—that it is, so appears from the affidavits on file—for the plaintiff to keep records and books in addition to those now kept by it and by other corporations engaged in a like business, at a considerable expense, and to make monthly reports based on calculations made from such records. This is not the simple obligation of a witness under a subpoena duces tecum, to answer questions and to produce books and records for inspection, but in addition to keep records and make calculations and reports. Such a burden can not be imposed upon an ordinary witness.

Northern Pacific Railway Co. vs. Keyes, 91 Federal Reporter

47.

4 Wigmore No. 2203, page 2989.

The commission contends that the order served upon the plaintiff does not undertake to prescribe methods of bookkeeping, nor to keep additional records, but under the allegations of the bill and the affidavits filed, I am of the opinion that this contention can not be sustained. The plaintiff can not comply with the orders of the commission without changing its methods of bookkeeping. That the act un-

undertakes to vest such powers (certainly as to matters connected with interstate commerce) in the commission is clear from section 10 of the act which provides penalties for any person who shall willfully "neglect or fail to make, or cause to be made, any false entry in any account, records, or memorandum kept by any corporation subject to this act, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation." These powers could only be justified under visitatorial power.

It has been held that Congress has such visitatorial power over corporations engaged in interstate commerce in *Wilson vs. U. S.* 221 U. S. 361, and in *Ellis vs. Interstate Commerce Commission*, 237 U. S. 434, but in these cases the power was limited to that portion of the business which was under the control of the Federal Government. No such power would seem to exist, however, as to other matters, and the two cases referred were cases in which subpoenas duces tecum has been issued, requiring the production of a corporation's books in the one case before a grand jury investigating charges of fraudulent use of the mail and in the other before the Interstate Commerce Commission. And in the latter case the court, through Mr. Justice Holmes, on page 444 (237 U. S.) said:

"If the price paid to the Armour Car Lines was made the cover for a rebate to Armour & Co., or if better cars were given to Armour & Co. than to others, or if, in short, the act was violated, the railroads are responsible on proof of the fact. But the only relation that is subject to the Commission is that between the railroads and the shippers. It does not matter to the responsibility of the roads whether they own or simply control the facilities, or whether they pay a greater or less price to their lessor. It was argued that the Commission might look into the profits and losses of the Armour Car Lines (one of the matters inquired about) in order to avoid fixing allowances to it at a confiscatory rate. But the commission fixes nothing as to the Armour Car Lines except under No. 15 in the event of which we shall speak."

"The appellant's refusal to answer the series of questions put was not based upon any objection to giving much of the information sought, but on the ground that the counsel who put them avowed that they were the beginning of an attempt to go into the whole business of the Armour Car Lines—a fishing expedition into the affairs of a stranger for the chance that something discreditable might turn up. This was beyond the powers of the commission. In *re Pacific Railway Commission*, 32 Federal Reporter 241. *Interstate Commerce Commission vs. Brimson*, 154 U. S. 447, 479. *Harriman vs. Interstate Commerce Commission*, 211 U. S. 407. The Armour Car Lines not being subject to regulation by the commission, its position was simply that of a witness interested in but a stranger to the inquiry, and the commission could not enlarge its powers by making the company a party to the proceedings and serving it with notice. Therefore the matter to be considered here, subject to the qualification that we are about to state, is how far an ordinary witness

could be required to answer the questions that are before the court."

In the case of a corporation doing a wholly intrastate business, could it be said that Congress has any visitorial power under the commerce clause of the Constitution of the United States? Clearly it has not. The fact that it happens to be the same corporation in this instance which mines and ships the coal does not give Congress any greater powers to regulate production and the intrastate commerce of such corporation. The visitorial power of Congress is limited to that part of the business over which it has control, and which under the Constitution it has the power to regulate.

118 In *Hammer vs. Dagenhart*, 247 U. S. 251, it is said (page 260).

"While the power to regulate commerce among the several States is in the same grant and in the same terms with the power over foreign commerce, yet there is a difference with respect to the extent of that power growing out of the difference in the relation of the United States to the two kinds of commerce, and the difference in the right of the citizen of the United States and the foreigner to engage therein. As to foreign commerce, the United States possesses and exercises all the attributes of sovereignty. As to interstate commerce, it exercises only that portion of sovereignty delegated to it."

(And again, page 261.)

"However much the *Knight Case*, 156 U. S. 1, may be weakened by later decisions, its distinction between production and commerce is still effective to prevent direct congressional regulation of production as distinguished from sale and transportation."

The power claimed by the commission is vast and unprecedented. The mere fact that a corporation engaged in mining ships a portion of its product to other States does not subject its business of production or its intrastate commerce to the powers of Congress. Doubtless the business of every coal-mining corporation, whether engaged in intrastate business or not, to some extent affects interstate prices and commerce, but, as stated in *U. S. vs. King*, 156 U. S. 1 (above), "The power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense." No sound reason is given why there is any difference in the business of coal mining of a corporation which ships its coal to another State and that of a corporation which does not. Interstate commerce is not affected any more in the one case than in the other.

In the case of *United States vs. Basic Product Co.*, 260 Federal Reporter, 472, in which it was urged that Section 6 of this act was unconstitutional, not only in so far as it authorized investigation and compulsory disclosure of matters which are beyond the commercial powers of Congress, but also in so far as it attempted to authorize a search or seizure by an administrative agency of the Government without charge or suspicion, Justice Orr of the District Court of the Western District, Pennsylvania, said:

"While the contention of counsel is probably sound, this court does not deem it necessary to go further than to hold that the

commission has not the power to carry on investigations which it has assumed in the present case."

In the same decision he also said:

"Imagination, if not experience, can suggest that persons, partnerships, and corporations may be engaged in interstate commerce by the transportation of merchandise solely by water; that their activities may give them their income from lighterage; or they may be engaged in the sole business of forwarding goods, with no interest in the vessels or wagons on which they are transported. The foregoing are merely the illustrations of activities which may perhaps be within the scope of the powers granted to the commission by the act as found in the fifth section thereof."

"Imagination, however, can not suggest such an extension of constitutional limitation as may justify the investigation undertaken by the commission in this case. Indeed, so far as it has been brought to the attention of the court, no such assertion
119 of power has ever been made to the courts. Investigation under subdivision *a*, section 6, is limited to corporations engaged in interstate commerce. The defendant is engaged in manufacture."

I am of the opinion, therefore, that no such visitatorial power as that claimed by the commission in the instant case has been vested in Congress by the Constitution, nor could Congress delegate such power to the commission.

But did Congress undertake to vest such power in the commission? It is the duty of the courts, if possible, to give the statute a construction which would not conflict with the Constitution.

Knight Templar Co. vs. Jarman, 187 U. S. 197, 205.

The corporations referred to in the act are by its terms limited to those engaged in "commerce" as defined in the act, and all the powers vested in the commission should be and, it seems, may be construed with this limitation. But the commission has undertaken to construe the act otherwise and to take steps under its construction of the act to require information and reports not relating to interstate commerce, but relating chiefly or wholly to production; and under its order the information which it has the power to demand can not be separated from that over which it has no control. While as to other matters, as stated in *In re Pacific Railway Commission*, supra, Congress may authorize the commission to obtain information upon any subject which, in its judgment, it may be important for it to possess, it may not compel the production of such information in respect to matters over which the federal government has no control.

It follows, therefore, that the commission can not compel the making of the reports which it has demanded of the plaintiff.

The plaintiff further contends that this power of the commission has been taken away by Presidential order. Much proof, in the form of affidavits, has been introduced by the defendant to show contemporaneous constructions of this order and that the power claimed by the commission in this case was not taken from it. The order is ambiguous, but, in view of my opinion as to the power of the commission, it is not necessary to decide this question in passing upon the application for a preliminary injunction.

Section 10 of the act provides that "if any corporation required by this act to file any annual or special report shall fail to do so within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business."

The plaintiff has failed to file the report demanded, and the commission has notified it that steps will be taken to recover the penalty prescribed above. The jurisdiction of a court of equity is not questioned by the defendants, and as I am of the opinion that the commission has not the power to exact the reports and information sought, the injunction prayed for will issue upon plaintiff executing bond with surety to be approved by the court in the penalty of \$5,000.

JENNINGS BAILEY, *Justice*.

120

Assignments of error.

Filed March 20, 1922.

The court, in this case, erred as follows:

1. In refusing to hear testimony and to go to trial on the pleadings.
2. In holding that the motion to strike out the amended answer, on the ground that it did not state a defense, was analogous to setting down the case for hearing on bill and answer, or to a motion to strike out under rule 39, and equivalent to a demurrer.
3. In holding that the amended answer did not state a defense to the bill of complaint.
4. In granting the motion to strike out the amended answer and in denying defendants' motion to vacate the order granting the motion to strike the amended answer and to take testimony, and to go to trial on the bill of complaint and the amended answer.
5. In making and entering the final decree and injunction and in entering the judgment for costs against defendants.
6. In not holding that Congress, under the Constitution, has full authority and power to grant, and does by the Federal Trade Commission act grant, to defendants the power to gather and compile full and complete information, among other things, of the business of plaintiffs (which are corporations engaged in commerce, as defined in said Federal Trade Commission act), including the information called for in the reports, schedules, and questionnaires complained of by plaintiffs, whether the same relates to or is a part of interstate commerce, or whether the same includes matters which relate
121 to or are a part of the local intrastate business of corporations engaging in interstate commerce.
7. In not holding that the powers exercised by the commission and the activities enjoined in this case are within the commerce clause of the Constitution.
8. In not holding that the power of Congress to authorize the gathering and compiling of information and/or to authorize the

requirement of reports from corporations engaged in interstate commerce as to the organization, business, conduct, practices, management, and relation to corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing extends to all matters directly or indirectly affecting the levying and collecting of taxes, borrowing of money, fixing of standards for weights and measures, promoting the useful arts by granting patents of monopoly for limited terms, raising and supporting armies, providing and maintaining a navy, and to all matters touching the promotion of the general welfare and making provision for the common defense, and the making of any laws necessary and proper to the exercise of these or any other legislative powers conferred by the Constitution upon Congress.

9. In not holding as a fact that coal and steel and its products are basic and necessary commodities of general and constant use throughout the United States, and in not holding that the business and trade in such commodities are affected with a general public interest and use, such as to entitle the supreme authority, the Nation, in this case through defendants, to complete and accurate information of all facts relating thereto, regardless of whether they relate to interstate trade or partly to interstate and partly to intrastate matters or whether they relate entirely to matters intrastate.

122 10. In holding that the requiring of such reports and answers to questionnaires and compliance with such requirement was an unlawful and unwarranted interference with or regulation of plaintiffs' purely local, private, intrastate affairs, businesses, and rights.

11. In not holding that plaintiff corporations engaging in commerce have no rights, either under the tenth, fourth, or fifth amendments to the Constitution, which are or can be violated by being required to furnish the information as to their business which is called for in the reports, answers, and questionnaires.

12. In not holding that the data called for by the reports complained of were not trade secrets within the meaning of the law and of the Federal Trade Commission act and in not holding that even though they were defendants were entitled, under the circumstances, to the information, where no disclosure thereof as to any individual complainant was contemplated, and in not holding that the disclosure contemplated, in the form of aggregate results as to trade and industry, was not disclosing either trade secrets or the secrets of business, or the unlawful interference with, or the taking away any constitutional or lawful right of any plaintiff.

13. In not holding that the due process clause of the fifth amendment to the Constitution and the fourth amendment relate only to natural persons and to criminal proceedings, and therefore have no application in this case, which relates to a civil, administrative matter touching corporations.

14. In holding that the Federal Trade Commission act does not confer authority upon defendants to require plaintiffs to make the reports and furnish the information called for in the schedules
123 complained of in the bill of complaint, and in holding that the Federal Trade Commission act, when construed to give defendants such power, is unconstitutional in that respect, and in not

holding that corporations which have elected to engage in interstate commerce may lawfully be required to furnish information as to their entire business.

15. In not holding that the gathering, compiling and making public of the general results of the information called for in this case is a purpose definitely authorized by the Federal Trade Commission act and is in aid of that recognized regulation of commerce which results through general publicity of full facts as to an entire trade and industry.

16. In not holding that the information called for is information respecting interstate commerce or information which has such a direct bearing upon interstate commerce as to be necessary, in order that defendants may properly perform their duties and regulatory functions relating to the interstate commerce and business of plaintiffs and all other corporations engaged in the same trade and business, and to prevent inconsistent State regulation thereof, and that if any interference with or regulation of the local or intra-state affairs or business of any of the plaintiffs result such interference and regulation is incidental and lawful.

17. In not holding that the plaintiff corporations are in business primarily for the purpose of selling and shipping their products in interstate commerce, and that the business of each is a unit, and that the business of each of said plaintiffs in its entirety is so interwoven that it is impracticable and/or impossible to segregate the required information as to the interstate portion of plaintiffs' business from that which is intrastate, and that it is therefore necessary for defendants, in order to properly perform the duties imposed upon them, within the power of the Federal Government, to have complete information as to the total businesses and trade of each of the plaintiffs, and that if any interference or regulations as to matter purely intrastate results it is incidental and lawful.

18. In not holding that information respecting the costs, whether of manufactured or purchased commodities sold in interstate commerce, is information respecting such commerce, and in not holding that information regarding costs of production, prices, investment, and earnings, whether considered severally or combined into a single report, have, primarily, relation to the profits of trade and to the conditions of trade and commerce; that costs of production, in particular, have relation especially to prices and the profits of trade; and that each of these data relate only secondarily to manufacture or production as particular stages in such flow of trade and commerce.

19. In not holding that information and data necessary to substantiate or check the accuracy of figures of costs submitted in response to the requirements of the Commission relating to the commodities sold in interstate commerce is information respecting plaintiffs' interstate commerce.

20. In not holding that although bookkeeping and financial records are not interstate commerce, the defendant Commission, charged with certain duties as to all corporations engaged in interstate commerce (except banks and common carriers) is entitled to and must have from complainant corporations which engage substantially in interstate commerce the complete information and knowledge of how such business is carried on, and the nature, extent, and the costs of

125 said business as disclosed by such books and records, and must otherwise fully inform itself as to all of said business so as to enable the commission properly to perform the duties and regulatory functions within its authority.

21. In holding that because manufacturing is not commerce, the Federal Government in this case, speaking through defendants, has no power to secure information relating to a manufacturing stage or process in the business of corporations which engage substantially in interstate commerce in their manufactured or converted products, and in holding that the procurement of such information is either a direct and substantial regulation or any attempt at regulation of matters which are not commerce.

22. In not holding that the authority to require annual and special reports justifies the requirement of monthly or quarterly reports as well as reports of a more sporadic character.

23. In not holding that the mere gathering and compiling of the required information is not in and of itself regulation of or undue and unlawful interference with the business of plaintiffs.

24. In not correctly distinguishing between proceedings under section 5 of the Federal Trade Commission act and investigation and the powers under section 6 and other sections of the said act to gather, compile, and publish information as to the business of all corporations engaging in interstate commerce (except banks and common carriers).

25. In not holding that the word "business" in section 6(a) of the Federal Trade Commission act comprehends all matters relating to capacity, production, and movement of commodities and all commercial and financial records, transactions, and facts, including costs, sale prices, contract prices, investments, receipts, 126 and disbursements, earnings, and profits, or losses.

JESSE C. ADKINS,

WM. T. CHANTLAND,

Attorneys for Defendants.

Designation of record.

Filed March 20, 1922.

* * * * *

The clerk will please prepare the transcript of record on appeal herein and will include therein the following papers:

1. Bill of complaint.
2. Temporary restraining order.
3. Amended answer.
4. Order substituting Defendant Nugent.
5. Defendant Nugent's answer.
6. Motion to strike out.
7. Stipulation signed by counsel for Midvale Steel Company and for defendant.
8. Stipulation signed by counsel for other plaintiffs and for defendants.
9. Opinion on motion to strike out.
10. Final decree.

11. Memorandum adopting the opinion in the Maynard Coal case.
12. Assignments of error.
13. This notice.

JESSE C. ADKINS,
WILLIAM T. CHANTLAND,
Attorneys for Defendants.

127 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 124, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 37954 in equity, wherein Claire Furnace Company et al. are complainants and Federal Trade Commission et al. are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at the city of Washington, in said District, this 24th day of March, 1922.

[SEAL.]

MORGAN H. BEACH,
Clerk,

By W. E. WILLIAMS,
Assistant Clerk.

115

Monday, May 22nd, A. D. 1922.

FEDERAL TRADE COMMISSION AND VICTOR MURDOCK,
Huston Thompson, Nelson B. Gaskill, and John
F. Nugent, members of and constituting the Fed-
eral Trade Commission, appellants,

vs.

No. 3798.

CLAIRE FURNACE COMPANY, THE ELLA FURNACE COM-
pany, Reliance Coke Company, et al.

The argument in the above-entitled cause was commenced by Mr. Wm. H. Fuller, attorney for the appellants, and was continued by Messrs. A. Leo Weil and Wm. Wallace, jr., attorneys for the appellees, and was concluded by Mr. Wm. T. Chantland, attorney for the appellants.

116 FEDERAL TRADE COMMISSION AND VICTOR MUR-
dock, Huston Thompson, Nelson B. Gaskill,
and John F. Nugent, members of and constituting
the Federal Trade Commission, appellants,

vs.

No. 3798.

CLAIRE FURNACE COMPANY, THE ELLA FURNACE COM-
pany, Reliance Coke Company, et al.

Opinion.

Mr. Justice Van Orsdel delivered the opinion of the court:

Appellee corporations filed a bill in the Supreme Court of the District of Columbia for an injunction to restrain appellant, Federal Trade Commission, from enforcing or attempting to enforce an order issued by the commission against the complainant companies requiring them to furnish monthly reports of the cost of production, balance sheets, and other information in detail, upon a large variety of subjects relative to the business in which complainant corporations are engaged.

The authority under which the commission assumes to act is expressed in a resolution, wherein it is stated that at a hearing held by a committee of the House of Representatives the commission was requested to suggest what might be done to reduce the high cost of living. In response the commission recommended to the committee "that it would be desirable to obtain and publish from time to time current information with respect to the 'production, ownership, manufacture, storage and distribution of foodstuffs, or other necessities, and the products or by-products arising from or in connection with the preparation and manufacture thereof, together with figures of cost and wholesale and retail prices,' and particularly with respect to various basic industries, including coal and steel."

An appropriation of \$150,000 was made available and the commission resolved to "proceed to the collection and publication of such information with respect to such basic industries as the said appropriation and other funds at its command will permit; and that such action be started as soon as possible with respect to the

coal industry and the steel industry, including in the latter closely related industries such as iron ore, coke, and pig-iron industries."

The alleged purpose of this report was to compile in combined or consolidated form the data received from individual companies, and to issue currently in such form accurate and comprehensive information regarding changes in the conditions of the industry, both for the benefit of the industry and of the public. At the same time, orders were issued to the complainant coal and coke companies requiring them to report the "monthly costs of production for the several products designated and other data as specified, in the form prescribed." Accordingly the commission issued to each of the complainant companies forms of reports, schedules, and questionnaires, calling for detailed information regarding the amount of products produced by the several complainants, respectively, the sales and contract prices thereof, and orders booked by them, the amounts allocated by them to depreciation, and administrative and selling expenses, and also to file with the commission quarterly income statements and balance sheets. In addition the commission required

complainants to submit their accounts and books for inspection
117 to enable it to check the reports which complainants were required to furnish from time to time. Complainants were warned that upon failure to comply with the orders of the commission the penalties prescribed by section 10 of the Trade Commission act would be imposed upon them.

Complainants allege, and it is not denied in the answer, that they "are engaged in producing, manufacturing, and making sales, in the states wherein their producing and manufacturing operations are conducted, and all of them are conducting mining operations or manufacturing plants, or both." The location of the manufacturing and mining plants is given and it appears that the companies are engaged in producing pig iron, tin plate, strip steel, billets, slabs, ingots, blooms, and other products of iron and steel finished and unfinished. It further appears that some of the companies are engaged in coal mining, manufacturing coke, and mining of ore. Defendant commission avers in its answer that with the exception of three companies named, "sixty-five per cent or more of the sales made by each of complainants is in interstate or foreign commerce, and that the greater portion of the principal raw materials of each concern is purchased and transported in interstate commerce to their converting plants."

The right of the commission to make the inquiry here involved is based upon the power of Congress to secure information concerning any subject matter in regard to which it has been given the power to legislate, and upon the further proposition that when one phase of a subject matter is within the jurisdiction of Congress it possesses the power to secure information as to the whole of the subject matter as a guide to further legislation. It is also urged, that power to obtain information is not limited to interstate commerce but includes intrastate commerce as well, when the two phases are a part of one subject; that the orders and report forms issued to complainants and others are for the purpose of inquiring into the whole of the steel industry of the United States, which industry, it is averred, includes both interstate and intrastate commerce. The commission then seeks to justify its proposed inquiry into complainants' business, both

interstate and intrastate, upon the hypothesis that the publication and dissemination of the information obtained will benefit the public and furnish a guide for future legislation.

Complainants having failed and refused to make the reports, the commission by written notice threatened the imposition of penalties for delay or failure to make due report as required. It is to restrain the commission from carrying the threats into effect that the present injunction is sought.

The commission answered the bill and complainants moved to strike out certain parts of the amended answer and to strike the entire amended answer from the files. The court ordered: "First. That the motion to strike out certain parts of the amended answer be overruled without prejudice to the right of the plaintiffs on any further hearings in said suit to raise objections to matters not properly pleaded. Second. That the second motion to strike the entire amended answer from the files be, and the same is hereby denied, except as to the ground that the said amended answer set forth no defense to the bill of complaint."

Defendants refusing to further plead or amend their answer, and expressing their willingness to stand upon their answer as a sufficient and complete defense, the court, treating the motion to strike as in the nature of a demurrer, entered a judgment making the temporary injunction final, from which decree this appeal was taken.

The extensive arguments set out in the answer, relative to the powers delegated by Congress to the commission; the power of Congress under the commerce clause of the Constitution; the authority of the commission to investigate the business affairs of a shipper in interstate commerce; the delegated power to inquire into the production of any commodity in nation-wide use, and the constitutional power of the commission to compel disclosure of the business methods employed by manufacturers and producers, are mere legal conclusions, not admitted by the motion to strike.

The statutory authority under which the commission in this instance presumes to act, is found in section 6, of the Federal Trade Commission act (38 Stat. 717), which provides: "That the commission shall also have power—(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships. (b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such

reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission."

The act further authorizes the commission "to make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use."

The word "commerce" as used in the act, is defined as "commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and
118 any state or foreign nation, or between the District of Columbia and any state or territory or foreign nation."

It will be observed that the inquiry instituted by the commission originated from a discussion of a committee of Congress relative to the high cost of living, and an appropriation by Congress of a lump sum to enable the commission to conduct such investigations as it might deem proper. There was no specific direction by Congress to make an investigation of the steel, iron or coal business. The commission on its own motion and by resolution instituted this investigation.

The commission is not proceeding upon any complaint filed before it, charging complainants with unfair competition or the violation of the Federal Trade Commission act or the antitrust acts. Neither is it the expressed intention of the commission to make an investigation relative to the operations of complainant companies in interstate commerce. The investigation seems to be more in the nature of a newsgathering expedition, in hope of securing something of public interest for publication, or possibly subject matter for future legislation by Congress. Common justice would seem to demand that before the business methods pursued by a corporation or an individual should be investigated, the party should be apprised either by a formal charge or by notice of the extent of the purposed investigation, in order that a day in court may be accorded. This is essential to determine whether the commission is acting within its jurisdiction and to meet the charges preferred.

This brings us to the point of determining whether in the present investigation the commission was acting within its jurisdiction. The authority of the commission, we think, is limited by the acts of Congress to investigating and reporting upon unfair methods of competition in interstate commerce, the enforcement of antitrust decrees and violations of the antitrust laws, and the making and publishing of reports thereon. The powers of the commission are limited to matters directly relevant to interstate commerce. In other words, the corporation under investigation must not only be engaged in interstate commerce, but the subject under investigation must be so related to interstate commerce that its regulation may be accomplished by act of Congress. Where the operations of a corporation, engaged in both interstate and intrastate commerce, are so interwoven and intermingled as to be inseparable, it may be conceded that in order to regulate interstate commerce, the intrastate

phases may be subjected to regulation and possible restriction, since the whole subject is thus brought within the jurisdiction of Congress.

But that is not this case. Here there is no intermingling in such manner as to render the interstate and intrastate features inseparable. Indeed, it is said of the iron and steel companies, in the brief of counsel for the commission, that "appellees bring their raw material from other States into those States where their plants are situated, and when the conversion or fabrication is complete approximately 65 per cent of the total of such converted products is sold and shipped into other States." Three separate and distinct operations are involved. First, the shipment of raw materials to the plants. If from outside of the State, the materials are in the nature of freight in interstate commerce from the time they are delivered to the carrier until they are delivered by the carrier at the plant. Second, the processes of manufacture by which the raw materials are converted into finished products, during which time the complainants are not engaged in commerce. Third, the sale and delivery of the finished product. If this is made outside of the State where the product has been manufactured, the product is in commerce as freight from the time of delivery to the carrier at the plant, until the carrier in turn delivers it to the consignee at destination. Indeed, the answer tacitly concedes the three operations by complainants—the assembling, the manufacture, and the sale of the manufactured article.

It, therefore, does not appear that complainants are common carriers or engaged in the operation of any of the instrumentalities of commerce. They are mere shippers, and as such are engaged in commerce only from the time their products, whether it be raw material or the finished product, are delivered to the carrier and in turn by the carrier delivered to them or to their consignees. "When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State." In *re Green*, 52 Fed. 113; quoted with approval in *Hammer v. Dagenhart*, 247 U. S. 251, 272.

Nothing is more clearly established by a long line of decision than that manufacture is not commerce. In *Kidd v. Pearson*, 128 U. S. 1, 20, the court said: "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation."

It is equally well established that the mere act of production is not commerce. As the court said in *Hammer v. Dagenhart*, *supra*: "However much the *Knight Case*, 156 U. S. 1, may be weakened by later decisions, its distinction between production and commerce is still effective to prevent direct congressional regulation of production as distinguished from sale and transportation."

Where manufacture and production are a part of and essential to the operation of an instrumentality of interstate commerce, they may become so intimately associated with the instrumentality itself, that they may be treated as accessory thereto. In such a case inquiry into the conditions of manufacture and production may become necessary to insure intelligent regulation of the instrumentality.

119 A coal mine or railroad shop maintained by the same company, or by a subsidiary company to further the operation of a railroad or other instrumentality of interstate commerce, may be so closely associated with the operation of the road itself, that their operation may be conducted in such a manner as to obstruct or burden the freedom of interstate commerce, and, therefore, be within the regulatory power of Congress. But this condition has no application where the manufacture and production are independent of the operation of an instrumentality of commerce.

In the present case some of the complainants, either directly or through subsidiary companies, produce the coal, ore, and coke, used in manufacturing their iron and steel products, while other complainants purchase these materials for similar use. In these circumstances the mere production or purchase is not commerce, since the articles are not used in connection with an instrumentality of commerce, but are delivered to common carriers for transportation, thus creating the relation merely of shipper and carrier. The mining of the coal and ore and the production of the coke, precede and are independent of any act of commerce, just as manufacture is independent of commerce.

Except where the act of production or manufacture is directly related to the operation of an instrumentality of commerce and directly connected therewith, the regulatory power of Congress over the commerce in shipping raw materials to the manufacturing plant and the commerce in shipping the product from the plant, terminates with the assembling and begins again with the shipment of the manufactured product. It also follows that if Congress may not regulate manufacture and production directly, it may not regulate it indirectly through the medium of publicity. No facts are alleged from which it may be inferred that the interstate commerce in which complainants are engaged, in assembling raw materials and in shipping the finished product, is affected even remotely by either the production of the raw materials or their manufacture into the finished product. As was said in the *Dagenhart* case: "The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. * * * Over interstate transportation, or its incidence, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation."

It is not even claimed that the proposed investigation is for the purpose of aiding Congress in the exercise of the Federal police power, or for the purpose of effecting a possible disclosure of some vague ground upon which Congress might be induced to attempt its exercise by legislation. The dividing line between a strictly private enterprise and a "business impressed with a public interest" has not been clearly defined. A corporation devoted wholly to the service

of the public, and whose revenues are derived from fixed uniform charges for the various services rendered, as an insurance company, *German Alliance Insurance Co. v. Kansas*, 233 U. S. 389, or an elevator company, *Munn v. Illinois*, 94 U. S. 113, or a bank, *Noble State Bank vs. Haskell*, 219 U. S. 104, may well be so impressed with a public interest as to justify its regulation for the promotion of the public welfare. But this modern doctrine, so frequently invoked in justification of the assertion of the police power, has no application to the steel and iron business. There is no governmental power that can be invoked to compel the steel companies to serve the public, nor do they assume to render a public service.

The large percentage of their products go into the construction of the instrumentalities of transportation which are owned and employed by companies engaged in commerce, which, in their interstate aspect, are subject to Federal control; but that implies no authority in the government to regulate the production of a mere commodity entering into an agency, the management and control of which Congress has the delegated power to regulate. Complainant companies are engaged in a competitive productive industry, similar to the woolen or cotton manufacturers and those engaged in numerous other industries, where the business is regulated by competition and supply and demand, and the product enters into the general volume of commerce, subject to all the natural laws and conditions which generally govern and affect trade.

Citation is made in brief of counsel of instances where private corporations submitted to requests of the commission for so-called "war reports" and answered without objection. But the emergency caused by the war has passed and no test was made of the jurisdiction of the commission to proceed even in those cases. It is unnecessary, therefore, to consider the authority of the commission in a war emergency, since the question of jurisdiction was not raised and the circumstances which there obtained are not present here.

The cases relied upon by the commission relate chiefly to the power of Congress, either directly or through the commission, to regulate and inquire into the affairs of corporations engaged in the operation of instrumentalities of interstate commerce, or industries so closely allied as to form a part of the general business entering into such commerce, and capable of being so conducted as to impose a burden on interstate commerce. They arose upon charges, in some instances civil and in others criminal, based upon violations of the antitrust act, or unfair methods of competition in commerce, or violations of the Federal Trade Commission act, or of so conducting a business as to obstruct or burden interstate commerce. They are not pertinent, however, to this inquiry, since the manufacturing business of complainants is not commerce, and, therefore, not subject to regulation by Congress, or investigation by the commission.

Special reliance, however, is placed upon the recent decision of the Supreme Court of the United States in *Stafford et al. v. Wallace et al.*, and *Burton et al. v. Clyne*, — U. S. —, involving the validity of an act of Congress providing "for the supervision by federal authority of the business of the commission men and of the live-stock dealers in the great stockyards of the country."

In an action for injunction to restrain the enforcement of the act, the court held that the plan of operation of the stockyards companies was so closely allied with interstate commerce as to amount to a scheme for monopolization thereof. The court basing its opinion upon the decision in *Swift & Co. v. United States*, 196 U. S. 375, said: "It is manifest that Congress framed the packers and stockyards act in keeping with the principles announced and applied in the opinion in the *Swift* case. The recital in sec. 2, par. b of Title 1 of the act quoted in the margin leaves no doubt of this. The acts deals with the same current of business, and the same practical conception of interstate commerce."

While in some instances the great volume of live stock passing in commerce through the stockyards of the country is transformed into dressed meat, the court was careful to distinguish the processes employed from manufacture in general. As was said in the *Swift* case: "Therefore the case is not like *United States v. E. C. Knight Co.*, 156 U. S., 1, where the subject matter of the combination was manufacture and the direct object monopoly of manufacture within a state. However likely monopoly of commerce among the state in the article manufactured was to follow from the agreement it was not a necessary consequence nor a primary end. Here the subject matter is sales and the very point of the combination is to restrain and monopolize commerce among the states in respect of such sales. The two cases are near to each other, as sooner or later always must happen where lines are to be drawn, but the line between them is distinct."

In *Hill, jr., et al., v. Wallace*, 257 U. S. 310, the court referring to the *Stafford* case "held it to be within the power of Congress to regulate business in the stockyards of the country, and include therein the regulation of commission men and of traders there, although they had to do only with sales completed and ended within the yards, because Congress had concluded that through exorbitant charges, dishonest practices and collusion they were likely, unless regulated, to impose a direct burden on the interstate commerce passing through." This again clearly distinguishes the *Stafford* case, since in the present case commerce does not pass through the plants where the processes of manufacture are conducted.

In these cases the court was dealing directly with the validity of statutes in which the purpose of Congress was clearly expressed. In the present case, however, there is no statute, and no object has been even intimated by Congress, nor are we enlightened by any definite statement from the commission of its purpose in making the investigation. The most that can be gathered from the answer is that a general survey of the coal, coke, steel and allied industries is contemplated, in a tentative search for information relative to the high cost of living. We are not impressed by the contention that the commission is invested with authority to inquire into and regulate any business of Nation-wide extent, or that the scope of its visitatorial powers are coextensive with the constitutional functions of Congress. As already suggested, we think the activities of the commission are strictly limited to the field of commerce, except so much thereof as has been occupied by the act to regulate commerce and by the Federal reserve act.

The decree is affirmed with costs.

Dissenting opinion by Chief Justice Smyth:

Being unable to concur in the opinion just announced, I state in a very general way the reasons for my dissent. For convenience I shall speak of the defendants as the commission.

This case does not call for a decision as to whether or not Congress or the Federal Trade Commission, acting by its authority, has the power to regulate manufacture or intrastate commerce. The order of the commission which is challenged does not seek to regulate anything. It simply calls for information relative to the activities of the plaintiffs in manufacture and commerce, both interstate and intrastate. It bases its claim to that part of the information which relates to manufacture and intrastate commerce upon the postulate that it is necessary to enable Congress and the commission to perform their respective duties with regard to commerce between the states, or at least that it is appropriate for that purpose.

The trial court sustained the plaintiff's motion to strike the commission's amended answer (hereafter called the answer), on the ground that it did not state a defense, and entered a decree for the plaintiffs. All its allegations, therefore, which are properly pleaded must be treated as admitted. Among other things, it alleges that plaintiffs are engaged in interstate commerce; that it is necessary that the commission procure complete information as to all the business of each of the plaintiffs in order that it shall perform its duty as to their interstate commerce; that unless the information is produced the commission will be unable to properly perform that duty, for the reason that all of the plaintiffs, while engaged substantially in interstate commerce, have also certain activities which are performed intrastate, and which activities are so interwoven with their interstate business that it is impossible to separate them, and that even if they could be separated the separation would render the result untrue and inaccurate and of little or no value in enabling the commission to perform its regulatory duties as to the interstate business of the plaintiffs. The answer also alleges that the information sought is necessary to enable Congress to perform its duties with respect to regulating the interstate and foreign commerce of the plaintiffs.

It is argued that the allegations of the answer to the effect that the information sought is necessary to enable Congress and the commission to perform their respective duties in regard to commerce between the States are mere conclusions of fact, and as such were not admitted by the motion; that the pleader should have set forth the facts from which it deduces the conclusion that the information is necessary. To this I can not accede. The purpose of the answer was to advise the plaintiffs as to what the commission expected to prove. This purpose was sufficiently served by stating the ultimate or operative facts. It was not required that the evidence upon which the commission relied to establish the facts should be set out.

121 If the plaintiffs desired a more specific statement, it was their right to move for it under equity rule 20, promulgated by the Supreme Court of the United States. This they did not do. A general statement of the essential ultimate facts upon which the defense rests is enough. "It was not necessary to aver * * * all the minute circumstances which may be proven in support of the general statement. * * *" The answer distinctly apprised the plain-

tiffs of the precise case they were required to meet *St. Louis v. Knapp Co.*, 104 U. S. 658, 661. As was said by Mr. Justice Holmes, delivering the opinion of the court in *Swift and Company v. United States*, 196 U. S. 375, 395, "a bill in equity is not to be read and construed as an indictment would have been read and construed a hundred years ago, but it is to be taken to mean what is fairly conveyed to a dispassionate reader by a fairly exact use of the English speech." See also *United States v. United Shoe Machinery Co.*, 234 Fed. 127, 136. It is my opinion that the answer sufficiently alleged that the information sought was necessary or at least appropriate for the purposes indicated, and that the motion to strike admitted it.

Plaintiffs allege in variant forms that the commission is not authorized by the act creating it to demand the information sought. Section 6 of the act is set out in the opinion of the court. It authorizes the commission to "gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices, and management of any corporation engaged in commerce"; to require, "by general or special orders, corporations engaged in commerce * * * to file with the commission in such form as the commission may prescribe, annual or special, or both annual and special, reports or answers in writing, to specific question, furnishing to the commission such information as it may require as to the organization, business, conduct, (and) practices" of the corporations mentioned. And it is declared to be the duty of the commission to "make public from time to time such portion of the information obtained by it * * * except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation," etc. The commerce spoken of is interstate.

In the answer it is alleged, and not denied, that all the plaintiffs are engaged in interstate commerce and that sixty-five per cent of their business, save as to three, is such commerce. They belong, therefore, to the class of corporations "concerning" which the act authorizes the commission to gather information. Does the information requested come within the purview of the act? It relates to the "business, conduct, practices, and management" of the corporate plaintiffs. It is called for in the form of special reports, and is sought for the purpose of making it public and of laying it before Congress with recommendations for additional legislation.

It is urged that, while the information relates to the business, etc., of the plaintiffs, this is not enough—that it must concern the interstate commerce features of that business. The answer, as we have shown, alleges, and the allegation is admitted, that the information is necessary in order that the commission and Congress may perform their duties with respect to the interstate features of the business. Since this is true, it must concern those features, and therefore it is such as the commission is authorized to gather.

The next inquiry is as to whether Congress had the power to confer upon the commission authority to gather information with respect to the manufacturing and intrastate activities of corporations engaged in commerce between the States, to the end that it might regulate, either by legislation or otherwise, the commerce over which

it has jurisdiction. The requiring of information concerning a business is not a regulation of that business. *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194, 211. In that case reports were called for by the commission with respect to intrastate business. The corporation refused to supply it, on the ground that the commission had no power to demand such information, because it related to intrastate business. But the court said that, since the information was essential to enable the commission to perform its required duties touching interstate commerce, the commission had a right to require it. There are other decisions to the effect that Congress may enter the domain of intrastate activities whenever it is appropriate that it should do so in order that it may properly exercise its regulatory power with respect to interstate commerce. *Interstate Commerce Commission v. Cincinnati, New Orleans and Texas Pacific Railway Company*, 167 U. S. 479, 506; *Schollenberger v. Pennsylvania*, 171 U. S. 1, 21; *The Minnesota Rate Cases*, 230 U. S. 352, 431.

One of the briefs for the plaintiffs admits that as soon as any concrete legislation should be submitted to or contemplated by Congress, "it would have full power to secure any and all information indispensable to a proper consideration and disposition of such proposed legislation." I think this concession is sound, but it is too restricted. May it not be essential that Congress should have information on a given phase of commerce before it formulates any concrete legislation or contemplates legislation with reference to it? And if so, why should it not have the same right to gather it as it would have, according to the concession, where legislation is actually pending? To say that it may authorize the procuring of all the facts necessary to the proper disposition of pending legislation but that it has no power to gather what may be appropriate to enable it to determine whether any legislation is necessary does not appeal to me as sound.

But it is argued that the regulatory power of Congress must be exercised through legislation, and that information desired for the mere purpose of publication may not be required by it. There is nothing in the Constitution which says how Congress shall exercise its regulatory power. This is left to its judgment. Former Senator Burton of Ohio in his work on *Corporations and the State*, 60, 61, after a very careful consideration of the matter, declared that "of all regulations which promise results publicity should be placed first."

122 It is beyond dispute that Congress has no general visitatorial powers over State corporations, but it has been decided that it has power to visit them for the purpose of seeing "that its own laws are respected." *Wilson v. United States*, 221 U. S. 361, 384. By a parity of reasoning may it not be said that if it is necessary to protect interstate commerce, or appropriate for that purpose, that Congress should enter the field of intrastate commerce, it may do so? *Houston & Texas Railway v. United States*, 234 U. S. 342. In that case the court said that Congress possesses "the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled." Page 353.

The power of Congress to require the production of the information in question is defended by the commission upon several grounds in addition to those I have mentioned, but I do not think it necessary for me to go further into the subject.

I am satisfied that the law requires that the information demanded be supplied, and therefore I think the decree of the lower court should be reversed and the bill dismissed.

123 Tuesday, January 2nd, A. D. 1923.

<p>FEDERAL TRADE COMMISSION AND VICTOR MURDOCK, Huston Thompson, Nelson B. Gaskill and John F. Nugent, members of and constituting the Federal Trade Commission, appellants.</p> <p style="text-align: center;"><i>vs.</i></p> <p>CLAIRE FURNACE COMPANY, THE ELLA FURNACE Company, Reliance Coke Company, et al.</p>	}	<p>No. 3798. January Term, 1923.</p>
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Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Justice VAN ORSDIEL,
January 2, 1923.

Mr. Chief Justice Smyth dissenting.

124 In the Court of Appeals of the District of Columbia.

January Term, 1923.

<p>FEDERAL TRADE COMMISSION AND VICTOR MURDOCK, Huston Thompson, Nelson B. Gaskill, and John F. Nugent, members of and constituting the Federal Trade Commission, appellants.</p> <p style="text-align: center;"><i>vs.</i></p> <p>CLAIRE FURNACE CO., THE ELLA FURNACE CO., RELIANCE Coke Co., Westmoreland-Connellsville Coal & Coke Co., Weirton Steel Co., Edgewater Steel Co., LaBelle Iron Works, Donner Steel Co., Steel & Tube Co. of America, Midvale Steel & Ordnance Co., Cambria Steel Co., Republic Iron & Steel Co., McKeesport Tin Plate Co., N. & G. Taylor Co., Inland Steel Co., Trumbull Steel Co., Bethlehem Steel Co., The Youngstown Sheet & Tube Co., The Brier Hill Steel Co., West Penn Steel Co., Wheeling Steel & Iron Co., and Sharon Hoop Co., appellees,</p>	}	<p>No. 3798.</p>
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Petition for allowance of appeal.

Come now the appellants, Federal Trade Commission and Victor Murdock, Huston Thompson, Nelson B. Gaskill, and John F. Nugent, members of and constituting the Federal Trade Commission, in the above-entitled cause and show that on or about the 3rd day of January, 1923, this court entered a judgment herein in favor of appellees and against these appellants, affirming the decree of the Supreme Court of the District of Columbia in favor of appellees, in which judgment of the Court of Appeals certain errors were committed to the prejudice of appellants, all of which will appear more in detail from the assignment of errors filed with this petition.

The appellants further show that the said judgment of this court is subject to review by the Supreme Court of the United States under the provisions of the third paragraph of section 250 of the Judicial Code in that the construction and application of the Constitution of the United States and the constitutionality of a law of the United States is drawn in question.

They further show that said judgment is subject to review by the Supreme Court of the United States under the fifth paragraph of section 250 of the Judicial Code in that the validity of an authority exercised under the United States, and the existence and scope of a power or duty of the appellants, said appellants being officers of the United States, are drawn in question.

They further show that said judgment is subject to review by the Supreme Court of the United States under the provisions of the sixth paragraph of said section 250 of the Judicial Code, in that the proper construction of an act of Congress, under which appellants purport to act, is drawn in question by appellees who were plaintiffs below.

WHEREFORE, they pray the allowance of an appeal removing this cause to the Supreme Court of the United States for the correction of the errors complained of; that appellants be permitted to deposit with the clerk of this court, \$100 cash, in lieu of the usual bond upon appeal; that a transcript of the record, proceedings, and papers in this case, duly authenticated, may be prepared by the clerk of this court.

THE FEDERAL TRADE COMMISSION,
VICTOR MURDOCK, HUSTON THOMPSON, NELSON B.
GASKILL, and JOHN F. NUGENT, *Appellants*,
By W. H. FULLER,
Chief Counsel, Federal Trade Commission.
ADRIEU F. BUSICK,
Attorney for Appellants.

Service of the within paper admitted and receipt of copy acknowledged this 16 day of March, 1923.

COOKE & BENEMAN,
Attorneys for Appellees.

128 FEDERAL TRADE COMMISSION VS. CLAIRE FURNACE CO. ET AL.

127 (Indorsement:) In the Court of Appeals of the District of Columbia. The Federal Trade Commission et al., appellants, vs. Claire Furnace Co. et al., appellees. Petition for allowance of appeal. Court of Appeals, District of Columbia. Filed Mar. 16, 1923. Henry W. Hodges, clerk.

128 Saturday, March 17th, A. D. 1923.

* * * * *
FEDERAL TRADE COMMISSION ET AL., APPELLANT,
vs.
CLAIRE FURNACE COMPANY ET AL. } No. 3798.

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above-entitled cause, it is ordered that said appeal be and the same is hereby allowed, with leave to appellants to make a cash deposit of one hundred dollars with the clerk of this court in lieu of bond.

129 MEMORANDUM:

March 17, 1923. One hundred dollars deposited with the clerk of the Court of Appeals, D. C., in lieu of bond.

130 UNITED STATES OF AMERICA, SS:

TO CLAIRE FURNACE COMPANY, THE ELLA FURNACE COMPANY, RELIANCE COKE COMPANY, et al., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Federal Trade Commission and Victor Murdock, Huston Thompson, Nelson B. Gaskell, and John F. Nugent, members of and constituting the Federal Trade Commission, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this seventeenth day of March, in the year of our Lord one thousand nine hundred and twenty-three.

CONSTANTINE J. SMYTH,
*Chief Justice of the Court of Appeals
of the District of Columbia.*

Service acknowledged this 17th day of March, 1923.

COOKE & BENEMAN.

(Indorsement:) Court of Appeals, District of Columbia. Filed Mar. 17, 1923. Henry W. Hodges, clerk.

132 In the Court of Appeals of the District of Columbia.

January Term, 1923.

FEDERAL TRADE COMMISSION AND VICTOR MURDOCK,
Huston Thompson, Nelson B. Gaskill, and John
F. Nugent, members of and constituting the Fed-
eral Trade Commission, appellants,

vs.

CLAIRE FURNACE CO., THE ELLA FURNACE CO., Re-
liance Coke Co., Westmoreland-Connellsville
Coal & Coke Co., Weirton Steel Co., Edgewater
Steel Co., LaBelle Iron Works, Donner Steel Co.,
Steel & Tube Co. of America, Midvale Steel &
Ordnance Co., Cambria Steel Co., Republic Iron
& Steel Co., McKeesport Tin Plate Co., N. & G.
Taylor Co., Inland Steel Co., Trumbull Steel
Co., Bethlehem Steel Co., The Youngstown
Sheet & Tube Co., The Brier Hill Steel Co.,
West Penn Steel Co., Wheeling Steel & Iron Co.,
and Sharon Steel Hoop Co., appellees.

No. 3798.

Assignment of errors.

Now come the appellants, by their attorneys, and say that in the record and proceeding in the Court of Appeals in the District of Columbia in the above-entitled cause and in the rendition of final judgment therein manifest error has intervened to the prejudice of appellants in this, to wit:

I.

That the court erred in affirming the decree of the Supreme Court of the District of Columbia, and in holding that the temporary injunction should be made final.

II.

That the court erred in holding that the amended answer did not state a defense to the bill of complaint.

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III.

That the court erred in not holding that Congress has power under the Constitution to require corporations engaged in interstate commerce to supply any information concerning their interstate commerce which may enable it intelligently and effectively to legislate respecting such commerce.

IV.

That the court erred in holding in effect that Congress can not create an agency for the purpose of securing information which may enable it intelligently and effectively to legislate on any subject within the jurisdiction committed to it by the Federal Constitution,

and can not constitutionally authorize an administrative agency to procure such information for it; and has not, by section 6 of the Federal Trade Commission act, constitutionally authorized the Federal Trade Commission to procure information for the use of Congress respecting the interstate commerce of corporations engaged in business.

V.

That the court erred in holding in effect that Congress has not power under the Constitution to require corporations engaged in interstate commerce to furnish it with such information respecting their intrastate commerce and manufacturing operations as may enable it intelligently and effectively to legislate respecting interstate commerce.

VI.

That the court erred in holding in effect that the power of Congress to authorize the gathering and compiling of information and/or to authorize the requirement of reports from corporations engaged in interstate commerce as to their organization, business, conduct, practices, management, and relation to corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing, does not extend to all matters directly or indirectly affecting the levying and collecting of taxes, borrowing of money, fixing of standards for weights and measures, promoting the useful arts by granting patents of monopoly for limited terms, raising and supporting armies, providing and maintaining a navy, and to all matters touching the promotion of the general welfare and making provision for the common defense, and the making of any laws necessary and proper to the exercise of these or any other legislative powers conferred by the Constitution upon Congress; and that section 6 of the Federal Trade Commission act is not a constitutional exercise of these powers.

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VII.

That the court erred in holding in effect that Congress can not constitutionally authorize, and has not by section 6 of the Federal Trade Commission act so authorized, the Federal Trade Commission to require from corporations engaged in interstate commerce information respecting their interstate commerce; and to publish and to transmit the same to Congress, which may enable Congress intelligently and effectively to legislate respecting interstate commerce.

VIII.

That the court erred in not holding that Congress may constitutionally authorize, and has by section 6 of the Federal Trade Commission act so authorized, the Federal Trade Commission to require from corporations engaged in interstate commerce information respecting their intrastate commerce and manufacturing operations, and to publish and to transmit the same to Congress, which may enable Congress intelligently and effectively to legislate respecting interstate commerce.

IX.

That the court erred in not holding that the appellee companies are in business primarily for the purpose of selling and shipping their products in interstate commerce, and that the business of each is a unit, and is so interwoven that it is impracticable and/or impossible to segregate the required information as to the interstate operations of the appellees' business from that which is intrastate, and that it is therefore necessary for appellants, in order properly to perform the duties constitutionally imposed upon it as the agency of Congress, to have complete information as to the total business and trade of each of the appellee companies, and that if any regulation of matters purely intrastate seems to result, it is incidental and a moral rather than a compulsory effect.

X.

That the court erred in holding that the Federal Trade Commission is not authorized, by section 6 of the Federal Trade Commission act, to investigate the matters concerning which information was asked in the questionnaires sent to the appellee companies, and in the course of such investigation to ascertain all of the facts called for in the questionnaires.

XI.

That the court erred in holding that the authority conferred by section 6 of the Federal Trade Commission act does not empower the Federal Trade Commission to require by special reports the information called for by the questionnaires sent to the appellee companies.

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XII.

That the court erred in holding that the information required in the questionnaires sent to the appellee companies respecting the prices received for iron and steel products sold in interstate commerce is not information respecting interstate commerce itself and such as the Federal Trade Commission may demand under the authority of the Federal Trade Commission act.

XIII.

That the court erred in holding that the information required respecting the cost to the appellee companies of producing iron and steel products sold by them in interstate commerce is not information respecting interstate commerce itself and not such as the Federal Trade Commission may demand under authority of the Federal Trade Commission act.

XIV.

That the court erred in holding that the information respecting the quantities of iron and steel products produced by the appellee companies, their capacity to produce such products, the quantities

sold, and the orders booked, was not necessary to a proper understanding of market conditions in interstate commerce of these products and therefore such as the Federal Trade Commission may demand under authority of the Federal Trade Commission act.

XV.

That the court erred in holding that the income statements and general balance sheets did not contain such information as the Federal Trade Commission could under authority of the statute require of the corporations engaged in interstate commerce, and such as Congress could constitutionally empower the Federal Trade Commission to require.

XVI.

That the court erred in not holding that the interstate and intrastate commerce, as well as the manufacturing operations of the appellee corporations, were so intermingled that appellee corporations could not furnish the information required in the Federal Trade Commission's questionnaires for their interstate commerce but must necessarily furnish it as applied to their entire business.

XVII.

That the court erred in holding that the appellee companies are engaged in interstate commerce only from the time raw materials purchased by them in States other than those in which their plants are located are delivered to the carrier for shipment to their plants and from the time products manufactured by the appellee
136 companies are delivered by the common carrier to the companies' consignees, in States other than those in which their plants are located.

XVIII.

That the court erred in holding that the purchase by appellee companies of raw material in States other than those in which their plants are located for shipment to their plants is not interstate commerce.

XIX.

That the court erred in holding that the interstate commerce of the appellee companies is confined to the transportation of products produced by them from one State to another, and does not include all negotiations and contracts for the sale of products produced by them in States other than the State produced, and the negotiations and contracts of purchase and the purchases by appellee companies of raw materials in States other than those in which their plants are located for shipment to such plants.

XX.

That the court erred in holding that inquiry into the conditions of manufacture and production may be had to insure intelligent regula-

tion by Congress of an instrumentality of interstate commerce but may not be had to insure intelligent regulation of commerce itself—i. e., the purchase and sale of commodities between persons in different States.

XXI.

That the court erred in holding, in effect, that the power to regulate interstate commerce is limited to the regulation of the business of common carriers.

XXII.

That the court erred in holding that no facts were alleged showing that the sale in interstate commerce by appellee companies of finished products manufactured by them is or may be affected by the manufacturing operations of the appellee companies.

XXIII.

That the court erred in holding that the sale by appellee companies of finished products in interstate commerce is not affected or may not be affected by the manufacturing operations of the appellee companies.

XXIV.

That the court erred in not holding that the appellee companies' business of manufacturing may be so conducted as to impose a burden on or to restrain interstate commerce.

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XXV.

That the court erred in holding that the Federal Trade Commission by resolving that the purpose of the investigation was to publish the information received, was without power under section 6 of the Federal Trade Commission act, and did not intend also to transmit said information to Congress, and was not acting as the agent of Congress for the purpose of securing information upon which Congress might act directly and which being brought to the notice of the public, might tend to accomplish the same purpose through moral effect.

XXVI.

That the court erred in holding in effect that the information required by the Federal Trade Commission is not such information as will enable Congress and the Federal Trade Commission, as the agent of Congress, to perform their respective duties in regard to interstate commerce in iron and steel products.

XXVII.

That the court erred in holding that it was not the expressed intention of the Federal Trade Commission to make an investigation relative to the operation of the appellee companies in interstate commerce.

XXVIII.

That the court erred in holding that the appellee companies were not advised of the extent of the investigation purposed by the Federal Trade Commission.

XXIX.

That the court erred in holding that the authority of the Federal Trade Commission under the Federal Trade Commission act is limited to investigating and reporting upon violations of section 5 of the Federal Trade Commission act, the enforcement of antitrust decrees, and violation of antitrust laws, and does not extend to making investigations respecting the conduct, organization, management, business and practices of corporations engaged in interstate commerce, and reporting the facts secured in such investigations to Congress and publishing such parts thereof as to the Federal Trade Commission may appear to be in the public interest.

XXX.

That the court erred in holding that the business of selling basic steel products in interstate commerce is not one affected with a public interest, concerning which Congress, through the instrumentality of the Federal Trade Commission, may demand full and complete information.

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XXXI.

That the court erred in holding that requiring information respecting the conduct, organization, business, management and practices of corporations engaged in interstate commerce for publication and transmission to Congress is a regulation of the business or commerce of such corporations, even though it may result in changes therein by moral effect.

WHEREFORE, the appellants pray that, for the errors aforesaid and other errors appearing in the record of said Court of Appeals, the said judgment of said Court of Appeals be reversed and for naught esteemed and that said cause be remanded to the said Court of Appeals with instructions to reverse the decree of the Supreme Court of the District of Columbia in said suit rendered or for such further proceedings in said suit as may be determined by the Supreme Court of the United States, to the end that justice may be done in the premises.

FEDERAL TRADE COMMISSION et al.,

Appellants.

By W. H. FULLER, *Chief Counsel*,
and ADRIEN F. BUSICK,

Attorneys for Appellants.

Service of a copy of the within paper admitted this 16th day of March, 1923.

COOKE & BENEMAN,
Attorneys for Appellees.

(Indorsement:) In the Court of Appeals of the District of Columbia. The Federal Trade Commission et al., appellants, vs. Claire Furnace Co. et al., appellees. Assignment of errors. Court of Appeals, District of Columbia. Filed Mar. 17, 1923. Henry W. Hodges, clerk. No. 3798.

140 In the Court of Appeals of the District of Columbia.

January Term, 1923.

FEDERAL TRADE COMMISSION AND VICTOR MURDOCK,
Huston Thompson, Nelson B. Gaskill, and John
F. Nugent, members of and constituting the Fed-
eral Trade Commission, appellants,

vs.

CLAIRE FURNACE CO., THE ELLA FURNACE CO., RE-
liance Coke Co., Westmoreland-Connellsville
Coal & Coke Co., Weirton Steel Co., Edgewater
Steel Co., LaBelle Iron Works, Donner Steel
Co., Steel & Tube Co. of America, Midvale Steel
& Ordnance Co., Cambria Steel Co., Republic
Iron & Steel Co., McKeesport Tin Plate Co., N. &
G. Taylor Co., Inland Steel Co., Trumbull Steel
Co., Bethlehem Steel Co., The Youngstown Sheet
& Tube Co., The Brier Hill Steel Co., West Penn
Steel Co., Wheeling Steel & Iron Co., and Sharon
Steel Hoop Co., appellees. No. 3798.

Designation of record.

The clerk will please prepare the transcript of record on appeal herein, and will include therein the following papers:

1. The record in the Supreme Court of the District of Columbia, as printed in this court.
2. Memorandum showing argument was had, etc.
3. Opinion of this court and dissenting opinion.
4. Decree.
- 141 5. Petition for allowance of appeal.
6. Order granting appeal.
- 6½. Memoranda as to deposit of \$100 cash in lieu of bond.
7. Citation.
8. Acceptance of service.
9. Assignment of errors.
10. This designation.
11. Certificate.

W. H. FULLER,
ADRIEN F. BUSICK,
Attorneys for Appellants.

Service of the within papers, and receipt of a copy thereof, admitted this 19 day of March, 1923.

LEW COOKE,
COOKE & BENEMAN,
Attorneys for Appellees.

142 [Indorsement:] In the Court of Appeals of the District of Columbia. January Term, 1923. Federal Trade Commission et al., appellants, vs. Claire Furnace Co. et al., appellees. No. 3798. Designation of record. Court of Appeals, District of Columbia. Filed Mar. 20, 1923. Henry W. Hodges, clerk.

143 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-written pages numbered from 1 to 142, inclusive, constitute a true copy of the transcript of record and proceedings of said court, as designated by counsel, in the case of Federal Trade Commission and Victor Murdock, Huston Thompson, Nelson B. Gaskill, and John F. Nugent, members of and constituting the Federal Trade Commission, appellants, vs. Claire Furnace Company, The Ella Furnace Company, Reliance Coke Company, et al., No. 3798, January term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twentieth day of March, A. D. 1923.

[SEAL.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

